

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019120390

LONG BEACH UNIFIED SCHOOL DISTRICT,

v.

PARENT OF BEHALF OF STUDENT.

DECISION

APRIL 8, 2020

On December 10, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Long Beach Unified School District, naming Student. On December 30, 2020, OAH continued the due process hearing. Administrative Law Judge Jennifer Kelly heard this matter in Long Beach on March 3 and 4, 2020.

Attorney Debra K. Ferdman represented Long Beach Unified School District, referred to as Long Beach. Special Education Administrator Dr. Seema Paul attended all

hearing days on Long Beach's behalf. Student's Parent represented Student. Student's Parent attended all hearing days on Student's behalf. Student did not attend the hearing.

At the parties' request the matter was continued to March 23, 2020, for written closing briefs. On April 3, 2020, Parent filed a prior written notice issued by Long Beach. The filing was untimely and not considered in this Decision. The record was closed, and the matter was submitted on March 23, 2020.

ISSUES

1. Was Long Beach's October 17, 2019 speech and language assessment appropriate and conducted in accordance with applicable law such that Student is not entitled to an independent educational evaluation in speech and language at public expense?
2. Was Long Beach's October 18, 2019 occupational therapy assessment appropriate and conducted in accordance with applicable law such that Student is not entitled to an independent educational evaluation in occupational therapy at public expense?

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).) Long Beach, as the filing party, had the burden of proof in this matter. 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).)

Student was 15 years old and in ninth grade at the time of hearing. Student resided within Long Beach's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism and secondary

disability of other health impairment due to comorbid diagnoses of attention deficit hyperactivity disorder and generalized anxiety disorder. Student's primary educational challenges arose from autism, and her related struggles with attention and following directions.

ISSUE 1: WAS LONG BEACH'S OCTOBER 17, 2019 SPEECH AND LANGUAGE ASSESSMENT APPROPRIATE AND CONDUCTED IN ACCORDANCE WITH APPLICABLE LAW SUCH THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION IN SPEECH AND LANGUAGE AT PUBLIC EXPENSE?

Long Beach contended that its October 17, 2019 speech and language assessment of Student was appropriate and complied with all legal requirements. Therefore, Long Beach contended it was not obligated to fund an independent speech and language evaluation. Parent disagreed with Long Beach's individualized education program offer and believed that an independent educational evaluation would provide better recommendations for Student's placement and services. Individualized education program is referred to as IEP. At hearing, Parent argued that the services offered by Long Beach were not adequate to meet Student's educational needs. However, whether or not Long Beach offered Student a FAPE is not an issue here and is not addressed in this Decision. Furthermore, the prior written notice issued by Long Beach after the hearing and filed by Parent with OAH on April 3, 2020, not only was untimely, but is not relevant to the issues in this matter.

Assessments are the cornerstone of a student's eligibility for special education under the IDEA and California law. Prior to making a determination of whether a child

qualifies for special education services, a school district must assess the child in all areas of suspected disability. (20 U.S.C. § 1414(a) & (b); Ed. Code, §§ 56320, 56321.) The school district must assess a student in all areas, including, if appropriate, health and development, vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

Assessments determine eligibility for special education, as well as the type, frequency, and duration of specialized instruction and related services that are required. No single procedure may be used as the sole criterion for determining whether the student has a disability or establishing an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2) & (3); 34 C.F.R. § 300.304(b)(2), (c)(4); Ed. Code, § 56320, subd. (e).) The evaluation must be sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (Ed. Code, § 56320, subd. (f); 34 C.F.R. § 300.304(c)(6).)

The school district's obligation to assess a student for special education eligibility is ongoing, and it must conduct a reassessment at least once every three years, called a triennial reassessment, unless the parent and school district agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, §§ 56043, subd. (k) & 56381, subd. (a)(2).) The school district must also conduct a reassessment if it determines the educational or related services needs of the child warrant a

reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381 subd. (a)(1)). The purpose of the reassessment is to determine:

1. Whether the student continues to have a disability as defined under federal law;
2. The present levels of performance and educational needs of the student; and
3. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general education curriculum.

(Ed. Code, § 56381, subd. (b)(2)(A)-(D).)

Reassessments must be conducted under the same procedures as initial assessments. (Ed. Code, §§ 56381, subd. (a), 56320, et seq.) A reassessment usually requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain consent, a school district must develop and propose a reassessment plan to the parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).)

THE TRIENNIAL ASSESSMENT PLAN AND PARENTAL NOTICE

Parents play an integral role in the assessment process and an assessment may not be done without parental consent. To obtain parental consent for an assessment, the school district must provide proper notice to the student and their parent. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).)

Long Beach initially assessed Student and qualified her for special education on November 28, 2007. Student qualified under the eligibility of speech and language impairment and received speech services. Parents enrolled Student in private school from third through fifth grade. Student reenrolled in Long Beach during sixth grade. Long Beach reassessed Student for special education services upon Student's reenrollment. Long Beach held an IEP team meeting in November 2016 and found Student qualified for special education services under the primary disability of autism and with a secondary disability of speech and language. Long Beach provided Student with related services in the areas of speech and language, assistive technology and adapted physical education.

Long Beach modified Student's IEP the next academic year on October 18, 2017, to add specialized academic instruction. Dr. Corinne Mann, Long Beach's audiologist, conducted a central auditory processing assessment of Student in May 2018 while Student was in seventh grade. Dr. Mann's assessment indicated evidence of an auditory processing disorder. Long Beach modified Student's IEP to add accommodations and supports for Student, including use of a Hearing Assistive Technology System device, based upon Dr. Mann's recommendations.

Long Beach added educationally related mental health services during Student's eighth grade year in 2018-2019 as the result of a diagnosis of generalized anxiety disorder, attention deficit hyperactivity disorder-combined presentation and autism spectrum disorder. On December 11, 2018, Long Beach added occupational therapy services to Student's IEP.

Long Beach conducted a triennial assessment in November 2016. Student's next triennial reassessment was due by November 2019. In contemplation of Student's

triennial IEP, on August 26, 2019, Long Beach provided Parent with an assessment plan for a triennial reassessment that met procedural requirements. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a); Ed. Code, § 56321, subd. (a) & (b)(1) -(4).) The proposed assessment plan was written in English, which was Parent's primary language. The plan was written clearly and in terms understandable by the general public. It explained the types of assessments to be conducted and identified qualified staff to conduct the assessments. The assessment plan was comprehensive, and included assessments in academics, general intelligence, communicative status, social/emotional status, behavior, life skills, and mobility.

The special education and general education teachers and school psychologist would assess Student's academic performance. The plan proposed to evaluate Student's health and development by a nurse, a behavior assessment by a behavior specialist, a language and speech assessment by a speech pathologist, and a motor abilities evaluation by an occupational therapist. The assessors would use standardized tests, interviews, records review, observations, and alternative assessments, when necessary. The plan described the proposed assessments and explained the assessments would be reviewed at an IEP team meeting before a program was proposed and, with Parent's consent, implemented. (Ed. Code, § 56321, subd. (a) & (b)(1) -(4); see also 34 C.F.R. § 300.9(a).)

A parent has at least 15 days from the receipt of the proposed assessment plan to arrive at a decision; the assessment may begin immediately upon receipt of the parent's consent. (Ed. Code, § 56321, subds. (a) & (c)(4).) This notice is essential to ensure that a parent is fully aware of the assessments to be administered, consents to the proposed evaluations and advised of their rights under the IDEA and California law.

Here, Parent acknowledged receipt of the procedural rights and returned the signed consent to the assessment plan on September 5, 2019. Parent did not raise concerns about the plan or request other areas for assessment. Long Beach obtained parental consent to a legally sufficient reassessment plan for Student. The assessment plan met all procedural requirements.

APPROPRIATENESS OF ASSESSMENTS

A district must assess a student in all areas of suspected disability after it receives parental written consent. (20 U.S.C. § 1414(b)(3); Ed. Code, § 56320, subd. (f).) The school district must follow statutory guidelines that dictate both the content of the assessments and the qualifications of the assessors. The school district must select and administer assessment materials that are in the student's native language and free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56340, subd. (b)(2).) They must be sufficiently comprehensive to identify all of the student's special education and related services needs, regardless of whether they are commonly linked to the student's disability category. (34 C.F.R. § 300.304(c)(6).) Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment," and be administered in accordance with any instructions provided by the producer of the assessments. (20 U.S.C. § 1414(b)(3)(A)(v); Ed. Code, §§ 56320, subd. (g), 56322.)

A school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C.

§ 1414(c)(1)(A); 34 C.F.R. § 300.305(a); Ed. Code, § 56381, subd. (b)(1).) The school district must identify any additional information that is necessary for the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The assessments must be conducted in ways necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) A variety of assessment tools and strategies must be used to gather relevant functional, developmental and academic information about the student, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1); see also Ed Code, § 56381, subd. (b)(1).)

The personnel who assess a student must prepare a written report explaining the results of the assessment that includes, among other items:

1. whether the student may need special education and related services;
2. the basis for making that determination;
3. the relevant behavior noted during 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, development, and medical findings, if any; and
6. if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage.

(Ed. Code, § 56327.) The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

Long Beach completed all of the agreed upon assessments and reviewed the triennial assessment results during Student's triennial IEP team meeting on October 21, 2019. The triennial IEP team meeting reconvened on November 5, 2019 due to time constraints for further discussion and development. The two IEP team meetings are collectively referred to as the triennial IEP. Parent and all required members attended the triennial IEP. The IEP team provided Parent with copies of the assessment reports and gave Parent the opportunity to ask questions and otherwise participate in the team meeting.

The assessors, including speech pathologist Heather Niedwick and occupational therapist Neille Mapanao, presented their reports to the IEP team. Long Beach timely completed and reviewed the assessments within the sixty days required by the IDEA. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f)(1), 56302.1, subd. (a), and 56344, subd. (a).) Therefore, Long Beach procedurally met its statutory obligation of timely providing Parent with the triennial assessment reports and including Parent in the triennial IEP team's review of the assessments.

PARENT'S REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

Parent requested that Long Beach fund independent speech and language and occupational therapy evaluations on November 6, 2019. The procedural safeguards of the IDEA provide that under certain circumstances, a parent is entitled to an independent evaluation if they disagree with an evaluation obtained by the public agency and request an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an

independent evaluation as set forth in Ed. Code, § 56329].) An independent evaluation is an evaluation conducted by a qualified assessor who is not employed by the school district responsible for the student's education. (34 C.F.R. § 300.502(a)(3)(i).)

The school district must, in response to a request to pay for an independent evaluation and "without unnecessary delay," either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) (providing that a public agency may initiate a due process hearing to show that its assessment was appropriate).) When a school district declines to fund a request for an independent evaluation at public expense, it must provide the parent prior written notice of its refusal. (20 U.S.C. § 1415(b)(3).)

Dr. Seema Paul, the Special Education Administrator for Long Beach, testified at hearing. She had worked at Long Beach since 2013, and previously worked as a principal in the Los Angeles County Office of Education. She had bachelors of arts degrees in sociology and psychology, a master of arts degree in marriage family therapy, and a doctorate of education. Dr. Paul was responsible for overseeing implementation of state and federal mandates for special education on behalf of Long Beach. She provided credible testimony based upon her familiarity with the procedural requirements for providing prior written notice and Long Beach's response to Parent's request for the independent evaluations.

Long Beach declined to fund the independent assessments and provided prior written notice of its decision to Parent on December 5, 2019, as it was required to under title 34 Code of Federal Regulations section 300.503. On December 10, 2019,

Long Beach timely filed this due process request and exercised its statutory right to demonstrate that its assessments were appropriate. (Ed. Code, § 56329; *J.P. v. Ripon Unified School Dist.* (E.D. Cal., Apr. 15, 2009, No. 207CV02084MCEDAD) 2009 WL 1034993.) Long Beach's complaint was filed without unnecessary delay within five weeks of Parent's request. Long Beach met the procedural requirements of responding to Parent's request for independent evaluations.

THE SPEECH AND LANGUAGE ASSESSMENT

Long Beach contends its speech and language assessment met legal requirements. The validity of an assessment requires a comprehensive evaluation of the student's needs. The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where the concern prompting the assessment was reading skills deficit].)

A student is eligible for special education and related services when they demonstrate difficulty understanding or using spoken language to such an extent that it adversely affects their educational performance and cannot be corrected without special education and related services. (20 U.S.C. § 1401(26); Ed. Code, § 56333.) A speech and language evaluation must be conducted by a speech and language specialist. (Ed. Code, § 56333.) A language, speech and hearing specialist determines whether a student is entitled to services based upon difficulty in understanding or using spoken language arising from a variety of disorders, including articulation disorders, abnormal speech, fluency difficulties or inadequate acquisition, comprehension or expression of spoken

language significantly below the language performance level of their peers. (Ed. Code, § 56333, subds. (a)-(d).) Reassessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.)

Speech pathologist Heather Niedwick conducted the speech and language assessment of Student over five different days and prepared a written assessment report. Ms. Niedwick had a bachelor of arts degree in communicative disorders and a master's degree in speech and language and communication disorders. She held a cleared credential for language, speech and hearing services, and a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech-Language-Hearing Association. She had worked for Long Beach for thirteen years at the time of the hearing. Ms. Niedwick possessed extensive experience and previously assessed and administered over 100 assessments of students with diagnoses of autism and other health impairments, and between 300 to 400 speech and language assessments. She had provided speech and language services to approximately 400 to 500 students during her time at Long Beach.

During the first semester of the 2019-2020 school year, Ms. Niedwick provided speech therapy to Student on an individual basis two times weekly, and provided weekly consultation to staff regarding Student's progress and needs. Ms. Niedwick's education, credentials and experience qualified her to conduct Student's speech and language assessment, administer standardized tests, interpret the results and prepare the report. Based upon her knowledge of Student, educational background, and experience, Ms. Niedwick credibly testified at hearing. Her testimony regarding the assessment and

her conclusions was thoughtful and well-reasoned. Her testimony and opinions were given substantial weight.

Ms. Niedwick's speech and language assessment was thorough and comprehensive. It consisted of:

- A review of Student's records and background information;
- Review of Student's health history;
- Consideration of written input from Parent;
- Observations of Student in the general education classroom and the speech and language room;
- Review of observation records completed by Student's teachers;
- Analysis of a language sample obtained through conversations with Student; and
- An informal structural-functional examination of Student's oral structures.

Ms. Niedwick also used the following formal assessment instruments for the following purposes:

- Comprehensive Assessment of Spoken Language-2 to assess Student's oral language function;
- Clinical Evaluation of Language Fundamentals-5 to identify, diagnose and evaluate Student's language skills deficits; and
- Clinical Evaluation of Language Fundamentals-5: Observational Rating Scale to assess Student's listening and speaking skills within the classroom and community setting through observations and ratings by Student's teachers.

The assessment materials and procedures used during the speech and language evaluation were selected so as to not be racially, culturally or sexually discriminatory.

Ms. Niedwick considered effects of environmental, cultural, or economic disadvantage in the selection and administration of the instruments used. She administered the materials and procedures in Student's native language of English. A variety of tools and strategies, including Parent input, were used to assess Student. Ms. Niedwick used no single procedure as the sole criterion for determining recommendations of an appropriate educational program. Ms. Niedwick was trained and knowledgeable about the assessment tools and administered them in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414, subds. (b) & (c); 34 C.F.R. § 300.304(c)(1)(iv) & (v); Ed. Code, § 56320, subds. (a) & (b).)

As part of her assessment, Ms. Niedwick reviewed Student's available health records, prior assessments and an input form provided by Parent describing his concerns about Student's language and diagnosis of central auditory processing disorder. She also reviewed Dr. Corinne Mann's audiology assessment of Student from May 2018.

Ms. Niedwick conducted a series of observations in the general education setting and the speech and language room. The first classroom observation lasted approximately 30 minutes. During a silent reading task assigned by the teacher, Student initially followed the teacher's instruction to take out a book to read silently for eight to ten minutes, but throughout the task looked up and gazed around the room. Following the silent reading activity, Student engaged in the class activity. She followed the teacher's instructions and volunteered to read a passage. Student read with an appropriate volume for others to hear, although her speaking rate was rushed and accelerated.

Ms. Niedwick conducted a second observation about two weeks later that lasted approximately twenty minutes. Student walked between classes with her aide, greeted her teacher appropriately and sat down at her desk. She followed the teacher's direction to copy words from the blackboard into a notebook, nodded her head to the teacher, and remained seated throughout the activity.

Ms. Niedwick observed Student in the speech and language room. Student initiated and responded to greetings by the speech-language specialist, asked questions related to the lesson and participated in all tasks presented. She used a rich and varied vocabulary, made appropriate comments and asked questions about self-selected topics. Her speech was approximately 90 to 95 percent intelligible, but portrayed a distortion of sounds. Student's speaking rate was accelerated and she spoke in long, detailed sentences, which negatively impacted her effectiveness in communicating.

Ms. Niedwick completed a variety of informal assessments to evaluate Student's current levels of speech and receptive and expressive language functioning. She prepared a language sample using utterances made by Student during conversations with Student and observed in the classroom. The purpose of the language sample was to evaluate Student's voice, fluency, articulation, pragmatics, vocabulary and number of utterances spoken. Student provided quantitative utterances well within the average range for Student's age. Student also used language to comment, describe and seek information. Student made appropriate social greetings, asked the assessor questions and made eye contact. Student spoke with appropriate volume and average pitch and quality, although Student demonstrated a tongue thrust. Her speech rate was rapid and Student presented with a lisp when making "s" and "z" sounds. Ms. Niedwick performed an informal structural-functional examination of Student's oral structures, which

included a visual inspection of the oral mechanism and assessed mobility and function. Ms. Niedwick did not find any structural or functional deficiencies that prevented Student from producing speech.

Ms. Niedwick administered the Clinical Evaluation of Language Fundamentals Observational Ratings Scale to obtain information from Student's teachers about Student's listening, speaking, reading and writing skills. Student's teachers described Student as polite and respectful. She showed difficulty in following directions, staying on subject when speaking, and making eye contact. At hearing, Ms. Niedwick persuasively explained that the overall meaning of this assessment was that Student had general difficulty following instructions and expressed frustration when people around her could not understand her language.

Ms. Niedwick also administered the Comprehensive Assessment of Spoken Language-2 to assess Student's oral language skills in the areas of use of antonyms, synonyms and double meaning. She administered the assessments and scored them in accordance with the directions provided. Ms. Niedwick had administered this assessment tool approximately 150 times, rendering her conclusions from this tool credible.

The Comprehensive Assessment of Spoken Language-2 consists of a battery of fourteen stand-alone tests, each of which measures a specific oral language skill. Ms. Niedwick credibly explained that she chose to administer the subtests evaluating the use of synonyms, antonyms and double meanings based largely upon her review of Long Beach's audiologist, Dr. Corinne Mann's May 2018 Audiology Report. Dr. Mann found that Student had an auditory decoding deficit that could adversely impact

Student's ability to discriminate differences in speech. This deficit could result in Student's inability to plan and follow directions. Ms. Niedwick persuasively testified that she chose the synonyms, antonyms and double meanings subtests to evaluate Student's ability to understand the meaning of words and their relationships.

The antonyms test measured Student's knowledge, retrieval and oral expression of words with opposite meanings. Student performed in the upper average range for Student's chronological age for use of antonyms, meaning Student could correctly understand age-expected antonyms. The synonyms subtest measured Student's recognition of words that have similar meanings. Student scored in the upper average range. Student scored in the below average range in the double meaning subtest, which measured the ability to identify and express two possible meanings for a single word or sentence that has multiple interpretations. Ms. Niedwick credibly explained that the results from the double meaning subtest supported her recommendation that Student continue to receive speech and language services to address Student's understanding of semantic relationships, or double meanings, of words.

Ms. Niedwick also administered the Clinical Evaluation of Language Fundamentals-5 to Student. The purpose of this assessment was to identify, diagnose and follow-up on language disorders in students ages five to twenty-one years. This assessment consists of nine subtests and five index scores. It evaluates a variety of fundamental language skills, including word class, following directions, formulating sentences, sentence recall, spoken paragraphs, semantics and pragmatic language. Ms. Niedwick was qualified to administer this assessment tool because she had previously administered this test between 50 to 100 times. She followed the directions

for administering and scoring the assessment. Ms. Niedwick's experience using this tool supported the validity of her findings.

The results of the language fundamentals evaluation reflected Student's areas of strength in recalling sentences, formulating sentences and word classes. Student scored within the average range for her chronological age in these areas. Student displayed weakness in the areas of following directions, sentence assembly and semantic relationships. In these areas, Student scored low to very low for her chronological age.

Student scored within the average range for her chronological age in overall core language skills. Student also scored within the average range for her age in the area of receptive language. Student performed in the average range in expressive language. Finally, Student's language content and language memory scores fell within the average range.

Ms. Niedwick administered the pragmatic profile in the Clinical Evaluation of Language Fundamentals to evaluate Student's functional communication skills using conversational interactions. The pragmatic profile was a checklist of speech intentions that are typically expected skills for social and school interactions in classrooms. The profile is used to identify verbal and non-verbal deficits that may negatively influence social and academic communication. The assessor completed the profile with input from written responses to questions by Student's teachers based upon a four-tiered scoring system for each expected skill. Student obtained a scaled score in the average range, consistent with her existing issues with pragmatics. Student demonstrated strength in nonverbal communication skills, such as voice tone, greetings and conversation.

Ms. Niedwick's convincingly testified that the results of the Clinical Evaluation of Language Fundamentals-5 supported her finding that Student demonstrated relative areas of weakness in the areas of following directions, forming sentences and word classes. She persuasively explained that continued speech and language services would assist Student in improving the efficiency and effectiveness of her communication skills.

Ms. Niedwick's assessment report summarized the evaluation and analyzed how the findings supported Student's eligibility. Based upon Ms. Niedwick's review of Student's records, Parent's input form, clinical data and observations, she recommended that Student continue to receive speech and language services to meet the listening and speaking standards of Student's curriculum. Ms. Niedwick recommended goals for Student in her report in the areas of speech rate, intelligibility, following directions and use of the Hearing Assistive Technology System device.

On October 21, 2019, Ms. Niedwick shared her findings and a written report with the triennial IEP team. The IEP team included all necessary members, including Parent. Parent actively participated in the IEP meeting and asked questions. He questioned Ms. Niedwick about her qualifications to assess Student in light of Student's auditory processing diagnosis, stated his belief that Student's eligibility should be updated to include specific learning disability, and expressed Student's dislike of the Hearing Assistive Technology System device. The IEP team responded to Parent's concerns, adopted Ms. Niedwick's assessment findings, and offered Student continued speech and language services with related goals.

Parent raised two concerns about the speech and language assessment at hearing. First, Parent asserted that Ms. Niedwick lacked sufficient experience to evaluate Student because she had conducted only one prior assessment of a student with a

diagnosis of central auditory processing disorder. Second, Parent contended that Long Beach's speech and language assessment did not consider Student's diagnosis of central auditory processing disorder made by Dr. Mann in May 2018, and therefore the assessment was deficient.

Parent argued the speech and language assessment was deficient because Ms. Niedwick lacked experience assessing students with diagnoses of central auditory processing disorder because she had previously assessed only student with this diagnosis. However, Ms. Niedwick had assessed between 40 to 60 students with auditory deficits. Further, in conducting her assessment, she reviewed and considered Dr. Mann's audiology report and the areas of weakness identified by Dr. Mann, such as identifying acoustic changes, auditory discrimination and auditory processing. Ms. Niedwick persuasively testified that she properly considered Student's auditory processing deficits prior to and during the speech and language assessment, and Long Beach incorporated speech and language goals addressing these deficits in Student's triennial IEP offer.

The adequacy of Ms. Niedwick's assessment was bolstered by Dr. Mann's testimony. Dr. Mann testified at hearing concerning her May 2018 audiology assessment of Student. Dr. Mann had a bachelor of science degree in communication sciences and disorders, a master's degree in audiology and a clinical doctorate in audiology. She had been licensed as an audiologist since 1990. She had worked for Long Beach since 2011. She held a California Dispensing Audiology License. Her testimony was careful and reasoned, and demonstrated a thorough understanding of Student's auditory processing deficits. Dr. Mann persuasively explained the overlap between auditory processing and speech and language deficits and the importance of a

multidisciplinary approach to evaluating a student's auditory processing deficits. Her testimony was afforded substantial weight.

Dr. Mann's testimony clarified that auditory processing disorder may coexist with other disorders, including attention-deficit/hyperactivity disorder and other learning disabilities. She explained that when a student has a co-morbid diagnosis of central auditory processing disorder and autism and/or attention-deficit/hyperactivity disorder, as does Student, it can be difficult to determine whether certain deficits are the result of the auditory processing disorder, autism, attention-deficit/hyperactivity disorder, or some combination thereof. Dr. Mann explained that due to the heterogeneity of the disorder, a multi-disciplinary approach is used to gather assessment data for students diagnosed with auditory processing disorder. Information may be gathered by the audiologist, the speech-language pathologist and other members of the IEP team, as was done here.

Dr. Mann reviewed the speech and language assessment by Ms. Niedwick. Dr. Mann credibly opined at hearing that Ms. Niedwick's assessment, as well as the relevant goals recommended by Ms. Niedwick, incorporated Dr. Mann's recommendations. For example, Student's auditory discrimination goal to assist with decoding, linguistic goal of improving prosodic interpretation tasks and use of the Hearing Assistive Technology System device to assist with auditory processing addressed the auditory deficits identified in Dr. Mann's report. In summary, Dr. Mann did not identify any areas of Student's suspected or actual needs that Long Beach failed to consider in terms of Student's auditory processing deficits when conducting its speech and language assessment.

Parent's major disagreement regarding the speech and language assessment related not to the appropriateness of the speech and language assessment, but to the offer of services made at the triennial IEP. However, the issue of whether Long Beach offered specific services to Student in the triennial IEP was not at issue in this hearing, and was not considered in this Decision.

At the triennial IEP team meeting and at the due process hearing, Ms. Niedwick explained why she chose the assessments she did, and that the assessment tools, whether normed tests or scales, were used for their intended purpose, valid and reliable, and administered in accordance with the instructions provided by the creator of the assessment. The tests and assessment materials were tailored to assess specific areas of educational need, and not merely designed to provide a single general intelligence quotient. Tests were selected and administered to best ensure that they accurately reflected the factors they were designed to measure.

The triennial IEP team had accurate, reliable and sufficiently comprehensive assessment information before it to appropriately and fully consider whether Student had additional unique needs that needed to be addressed. Therefore, Long Beach's October 2019 speech and language assessment and report was appropriate, and was conducted in accordance with legal requirements. Long Beach satisfied its burden of proof on this issue and Student therefore is not entitled to an independent evaluation at public expense in the area of speech and language.

ISSUE 2: WAS LONG BEACH'S OCTOBER 18, 2019 OCCUPATIONAL THERAPY ASSESSMENT APPROPRIATE AND CONDUCTED IN ACCORDANCE WITH APPLICABLE LAW SUCH THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION IN OCCUPATIONAL THERAPY AT PUBLIC EXPENSE?

Long Beach contended that its October 18, 2019 occupational therapy assessment of Student was appropriate and complied with all legal requirements. Therefore, Long Beach was not obligated to fund an independent occupational therapy assessment. Parent disagreed with Long Beach's offer and believed that an independent occupational therapy evaluation would provide better recommendations for Student's placement and services.

School districts are required to assess in all areas of suspected disability, including, if appropriate, health and development, motor abilities, self-help, orientation and mobility skills. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).)

Occupational therapist Neille Mapanao conducted the occupational therapy assessment of Student and produced an October 18, 2019 report. She held a bachelor of arts degree in psychology, a master of arts degree in occupational therapy and a state occupational therapist license. She had worked for Long Beach as an occupational therapist for five years. Prior to working for Long Beach, Ms. Mapanao had worked as an occupational therapist at Los Angeles Unified School District for approximately ten years. Her licensing and occupational board certification required regular completion of continuing education courses. She held a Sensory Integration Processing Test Certification and an Assistive Technology certification, and completed continued

education courses in visual motor and visual processing, motor planning, alternative sensory strategies and sensory integration.

Ms. Mapanao's responsibilities at Long Beach included conducting assessments of students, providing consultations, observing students, participating in IEP team meetings, and treating students with motor skill deficits. She had conducted approximately 600 assessments in the educational setting during her career, which included around 150 assessments of students diagnosed with autism spectrum disorder. She had provided direct occupational therapy services to approximately 200 students on the autism spectrum. She had conducted approximately 50 assessments of students diagnosed with auditory processing deficits.

Ms. Mapanao provided occupational consultation services to Student, Student's aide and Student's teachers during the fall of 2019 for the purpose of assisting Student with accessing her educational curriculum. She provided recommendations for use of the Hearing Assistive Technology System device, as well as sensory and behavior strategies. She conducted an occupational assessment for Student's triennial IEP and prepared a report. Her occupational therapy assessment's purpose was to evaluate how Student functioned within the demands of a school environment. Ms. Mapanao testified at hearing. Her testimony demonstrated a caring concern for Student. Her credentials, experience and knowledge of Student rendered her testimony credible, and her testimony was given substantial weight.

OCTOBER 18, 2019 OCCUPATIONAL ASSESSMENT REPORT

Ms. Mapanao conducted an occupational therapy assessment of Student over a five-week period in September and October 2019. The assessment was an educational evaluation to assess Student's performance within the educational environment and on

task demands related to the curriculum. The purpose of the evaluation was to determine if Student had deficiencies in her motor skills that impacted her ability to participate in the school setting or access her curriculum.

Ms. Mapanao used these assessment procedures:

- Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th Edition, a standardized measure of the ability of the brain to interpret and translate visual information into motor skills, Visual-Motor Integration is referred to as VMI;
- Beery VMI Developmental Test of Visual Perception, a standardized assessment that evaluates a student's visual perceptual functioning;
- Beery VMI Developmental Test of Motor Coordination, a standardized evaluation that explores whether motor coordination difficulties are contributing to delays in visual-motor integration;
- Clinical observations of seating positioning and accessing the school environment, fine motor skills, visual motor and visual perception skills, self-care skills during the school day, sensory processing and sensory modulation skills, and motor planning and ideation;
- Parent and educational staff interviews; and
- Records review.

As part of her assessment, Ms. Mapanao interviewed Parent, observed Student on three separate occasions, reviewed Student's background information and school records, interviewed Student's teachers, reviewed Student's work samples, and administered standardized assessments. She considered Parent's concerns about Student's fine and gross motor skill impairments, low muscle tone and lack of endurance, scapular winging, putting

non-food items in her mouth, problems with personal hygiene, and autistic related behaviors such as hand-fluttering and aggressive body rocking.

Ms. Mapanao communicated with Student's seven teachers. None of Student's teachers expressed concern about Student's ability to access her curriculum or the school setting. Some teachers communicated that Student's handwriting was difficult to decipher and she had difficulty following directions and needed to be prompted to stay on task.

Ms. Mapanao observed Student in the general education setting on three occasions. During the first observation, Student worked with a small group of students. Student opened her Chrome Book and typed on the keyboard. Student followed simple directions, independently packed her backpack and walked out of the classroom with her aide. Student could sit in her seat, walk around the classroom and through the campus, navigate obstacles, open and close her backpack, write with a pencil, type on a keyboard, unlock her locker, and participate in physical education.

During Ms. Mapanao's second observation, Student texted or typed on her telephone, rocked in her seat, smelled her lip gloss repeatedly and blew her nose more than twelve times. Student appeared anxious. On the third observation, Student participated in a brainstorming activity with a group of her peers with minimal prompts. During her physical education class, Student participated with her peers in jogging and push-ups.

Ms. Mapanao administered and scored the formal assessments in accordance with the directions provided. She had administered these assessments approximately 75 times. Ms. Mapanao assessed Student's visual motor and visual perception skills

through the Beery VMI assessment. The Beery VMI is a standardized pencil-paper task that requires a student to copy increasingly complex designs. Student scored in the very low and below average range on this assessment. Student also completed the Beery VMI-Visual Perception, which screens for visual perceptual function. The assessment consists of a matching task for thirty items, and its results indicate whether a visual perceptual difficulty contributes to delays in visual motor function. Student scored below average on this assessment. Ms. Mapanao also administered the Beery VMI Developmental Test of Motor Coordination. This assessment requires the student to trace a form with a pencil without going outside a double-lined path. This test examines whether motor coordination difficulties contribute to a student's delays in visual-motor integration. Student scored in the very low range on this subtest.

Ms. Mapanao testified at hearing that the Beery VMI, Beery VMI-Visual Perception and Beery VMI Developmental Test of Motor Coordination were administered to Student to assess how Student interprets information and translates the same to motor tasks. These assessments provided information about how Student perceived information visually and translated it into action. She provided an example of a student reading a sentence on a white board and then copying it onto paper. Although Student's scores on these assessments were low, Student was functioning well at school with accommodations. Ms. Mapanao persuasively opined that Student's ability to use her Chrome Book for written assignments, take pictures of notes on the board using her telephone, and access to class pre-printed notes were appropriate supports for Student to produce work and access her curriculum.

Parent argued that Long Beach should have administered the Bruininks-Oseretsky Test of Motor Proficiency to assess Student, which Long Beach had previously used for Student when she was in seventh grade. This tool evaluates fine and gross motor coordination skills, including body coordination and strength and agility. Parent argued Long Beach should have administered this assessment because Student previously had scored well below average for gross motor skills on this evaluation.

The selection of particular testing or evaluation instruments is left to the discretion of the school district. As long as the statutory requirements for assessments are satisfied, parents may not put conditions on assessments; “selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities.” (Letter to Anonymous (OSEP 1993) 20 IDELR 542.) Here, Long Beach proved that the standardized assessments administered to Student were appropriate to evaluate Student’s visual perception and motor coordination skills. Ms. Mapanao credibly opined that reassessment of Student’s gross motor skills was unnecessary because Long Beach assessed in this area the prior year in May 2018. Long Beach therefore was aware of Student’s gross motor deficiencies. Parent agreed at the triennial IEP that there were no changes in Student’s gross motor skills that suggested reassessment was necessary. Furthermore, Ms. Mapanao testified persuasively at hearing that her assessment showed that Student could move freely around campus and in the classroom, and that she kept up in physical education with her general education peers.

Ms. Mapanao also assessed Student’s fine motor skills, including hand strength, coordination and range of motion. Student displayed difficulty with consistently writing legibly, consistent with comments of some of Student’s teachers. Ms. Mapanao

explained at hearing that in light of Student's age, it would take considerable effort to retrain letter formation habits. Student used a functional quadrupod grasp on writing utensils. Student demonstrated adequate fine motor strength to access educational materials, including pencils, laptops and keyboards. Student could open containers, pick up items with her fingers, unzip and zip her backpack, and open her locker. In summary, Student's overall fine motor skills functioned sufficiently for her to access the school setting.

Ms. Mapanao evaluated Student's self-care skills during the school day. Student independently engaged in self-care activities, including toileting, dressing and undressing for physical education and eating.

Ms. Mapanao assessed how sensory information impacted Student's interactions in the school environment. Ms. Mapanao examined Student's sensory modulation and discrimination using her assessments, observations and interviews with Parent and Student's teachers. She analyzed Student's four sensory systems: the tactile system, proprioception system, vestibular system and auditory system.

The tactile system involves the way a person perceives the sense of touch on the skin. Student did not need to excessively touch items or people within her surroundings. Student displayed some repetitive tasks, such as repeatedly smelling her lip gloss. Ms. Mapanao persuasively explained that this is a socially and age appropriate type of self-regulation. Student engaged in other appropriate self-regulating activities, such as taking movement breaks, walking away or taking deep breaths, and Student's teachers were aware of these activities and allowed Student to perform these tasks, as needed.

Ms. Mapanao also assessed Student's proprioception system. The proprioception system is responsible for sensation from the muscles and joints enabling the brain to know where the parts of the body are and how it is moving. Parent had some concerns in the area of Student's body awareness. However, Student did not excessively seek or avoid proprioceptive input within the school setting.

The vestibular system positions the head in relation to gravity and movement. Student often fidgeted with her hands and body. However, Student could take breaks and access other accommodations that regulated this behavior.

The auditory system, or sense of hearing, addresses how one responds to sounds in the environment. Based upon feedback from Student's teachers, Ms. Mapanao determined that Student is able to hear what is being said and is not excessively bothered by background sounds in the classroom. Parent argued that Student's imperfect hearing was not adequately assessed by Long Beach. Long Beach proved by the preponderance of the evidence that it considered Student's auditory processing deficits in connection with its speech and language assessment.

Ms. Mapanao opined that Student demonstrated an appropriate alertness and situational awareness to participate in classroom activities. Student needed moderate prompts to remain focused on classroom tasks. Student could absorb and process sensory information to engage in the school environment and participate in classroom activities.

Ms. Mapanao evaluated Student's motor and planning skills. Student demonstrated functional stability, control and balance to maneuver around the campus. Student walked independently, transitioned from a seated to standing position, and

accessed her backpack. Student walked through campus without bumping into others, and participated in physical education. Student had adequate muscle strength, tone, balance and range of motion to access her educational setting.

Ms. Mapanao summarized her findings in her October 18, 2019 written report and made some recommendations. She suggested modifications and accommodations, such as providing Student access to adaptive paper for writing and pre-printed notes, allowing Student to type assignments on Student's Chrome book, breaking down tasks into smaller sections, requiring constant teacher check-in during class, allowing Student to leave class two minutes early to avoid big crowds, and permitting continued sensory breaks.

Ms. Mapanao's assessment of Student's occupational therapy needs was thorough and comprehensive. Ms. Mapanao identified Student's then-current occupational therapy needs and made recommendations regarding how Student's needs might be addressed. She chose the assessments and administered them in a manner so as not to be racially, culturally, or sexually discriminatory. All assessments were valid and reliable for the purpose in which they were used and they included multiple measures.

Long Beach reviewed the report with Parent at the triennial IEP on October 21, 2019. All necessary school staff were present, including Parent. Parent asked questions about the assessment measures used, and Ms. Mapanao explained why the particular assessments were administered. Parent expressed concerns about Student's scapular winging, a condition when a shoulder blade sticks out instead of resting flat against the back of the chest wall, and the potential impact on Student's ability to pass the physical

fitness test. Ms. Mapanao testified convincingly at hearing that this condition did not impact Student's ability to access her curriculum.

Long Beach proved by a preponderance of the evidence that the October 2019 occupational therapy assessment of Student complied with all legal requirements. Long Beach satisfied its burden of proof on this issue and Student therefore is not entitled to an independent education evaluation at public expense in the area of occupational therapy.

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: Long Beach's October 17, 2019 speech and language assessment was appropriate and conducted in accordance with applicable law. Student is not entitled to an independent educational evaluation in speech and language at public expense. Long Beach prevailed on Issue 1.

Issue 2: Long Beach's October 18, 2019 occupational therapy assessment was appropriate and conducted in accordance with applicable law. Student is not entitled to an independent educational evaluation in occupational therapy at public expense. Long Beach prevailed on Issue 2.

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.

/s/

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings