

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020080399

ALAMEDA UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

DECISION

December 3, 2020

On August 14, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Alameda Unified School District, naming Student. On September 20, 2020, OAH granted the parties' joint request for continuance. Administrative Law Judge Cole Dalton heard this matter by videoconference on September 29, 2020 and September 30, 2020.

Attorney Jan Tomsy represented Alameda Unified School District. Attorney Ankita Thakkar attended each day of hearing. Pamela Kazee attended all hearing days on Alameda's behalf. Attorneys Tania Whiteleather and Robin Miller represented Student. Parents attended all hearing days on Student's behalf.

At the parties' request OAH continued the matter to October 28, 2020 for written closing briefs. The record was closed, and the matter was submitted on October 28, 2020.

ISSUE

Did Alameda properly deny Parent's request to fund an independent educational evaluation by Dr. Carina Grandison by relying on agency criteria that the assessor either be a licensed educational psychologist or a credentialed school psychologist?

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] (*Schaffer*); and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Alameda has the burden of proof on the sole issue alleged in Alameda's complaint. 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 eight years old and in third grade general education at the time of hearing. Student resided within Alameda's geographic boundaries at all relevant times. Alameda assessed Student for special education eligibility, resulting in an assessment report dated December 2, 2019. Credentialed school psychologist Charlene Natividad-Cuevas conducted the psychoeducational assessment. Alameda held an individualized education program, referred to as an IEP, team meeting to review assessments on December 3, 2019, and determined Student was not eligible for special education.

In June 2020, Parents requested, and Alameda agreed to fund, an independent psychoeducational evaluation. Parent selected an evaluator recommended by their advocate. The evaluator did not meet Special Education Local Plan Area, called a SELPA, qualification criteria adopted by Alameda.

ISSUE: DID ALAMEDA PROPERLY DENY PARENT’S REQUEST TO FUND AN INDEPENDENT EDUCATIONAL EVALUATION BY DR. CARINA GRANDISON BY RELYING ON AGENCY CRITERIA THAT THE ASSESSOR EITHER BE A LICENSED EDUCATIONAL PSYCHOLOGIST OR A CREDENTIALLED SCHOOL PSYCHOLOGIST?

Alameda contends that it appropriately denied Student’s request for an independent psychoeducational evaluation with Dr. Carina Grandison as Dr. Grandison does not meet SELPA qualification criteria. SELPA qualification criteria require psychoeducational evaluators be either credentialed school psychologists or licensed educational psychologists. Alameda argues this requirement is appropriate. Alameda further contends that Student did not show that Dr. Grandison was uniquely qualified and therefore a necessary evaluator.

Student argues that Alameda’s list of evaluators was not exhaustive and she was not required to choose from the list. Student also argues that Dr. Grandison’s qualifications exceed SELPA minimum criteria.

An assessment of the student's educational needs must be conducted before any action is taken to place a student with exceptional needs in a special education program. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) An assessment may be initiated by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).) The IDEA uses the term “evaluation,” while California Education Code uses the term “assessment.” As used in this decision, the terms “assessment” and “evaluation” mean the same thing and are used interchangeably.

The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent evaluation. (20 U.S.C. 1415(b)(1); 34 C.F.R. § 300.502(b)(1) and (b)(2); Ed. Code §§ 56329(b), 56506(c).) A parent is entitled to only one independent educational assessment at public expense each time the public education agency conducts an assessment with which the parent disagrees. (Ed. Code § 56329(b).)

The provision of an independent evaluation is not automatic. Following the student's request for an independent evaluation, the public agency must, 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).) If a parent elects to obtain an independent evaluation by an evaluator not on the public agency's list of evaluators, the public agency may initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the public agency criteria applicable for independent evaluations, or there is no justification for selecting an evaluator that does not meet agency criteria. (*Id.*; *Letter to Parker*, 41 IDELR 155 (OSEP 2004).) If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation may be presented by any party as evidence at a hearing on a due process complaint. (34 C.F.R. § 300.502(c)(2).)

The term "unnecessary delay" as used in 34 C.F.R. § 300.502(b)(2) is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, 56 IDELR 175 (OSEP 2010).) Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations or other attempts to resolve the matter. (*J.P. v. Ripon Unified Sch. Dist.* (E.D. Cal. April 15, 2009) 2009 WL 1034993.) The determination of "unnecessary delay" is a fact-specific inquiry. (*See Pajaro Valley Unified Sch. Dist v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289 (a delay of almost three months between parent's request for an independent evaluation and district's due process filing was unreasonable where district offered no explanation or justification for its delay); *J.P. v. Ripon Unified School Dist.*, (two-month delay during which time district attempted to negotiate an independent evaluation agreement with parent and district filed for due process less than three weeks after negotiations came to an impasse was not unnecessarily long); *L.S. ex rel. K.S. v. Abington Sch. Dist.* (E.D. Pa. Sept. 30, 2007, No. 06-5172) 2007 WL 2851268 (district's 10-week delay in filing a due process request was not a per se violation where there was evidence of ongoing efforts during that time to resolve the matters and district, within 27 days of the independent evaluation request, orally told parents the request would be denied).)

If a school district decides not to take a requested action, including agreement to the independent evaluation requested by parents, the district must provide parents with a prior written notice within a reasonable time period. (34 C.F.R. § 300.503.) The notice must include an explanation of why the agency proposes or refuses to take the action. A district's violation of its obligation to assess a student is a procedural violation of the

IDEA and the Education Code. (*Park v. Anaheim Union High Sch. Dist., et al.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033.)

Procedural violations of the IDEA only constitute a denial of FAPE if they impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); Ed. Code, § 56505, subd. (f)(2); see *N.B. v. Hellgate Elementary Sch. Dist., ex rel. Bd. of Directors, Missoula County, Mont.* (9th Cir. 2008) 541 F.3d 1202, 1208, quoting *Amanda J. ex rel. Annette J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F.3d 877, 892.)

ALAMEDA FULFILLED PROCEDURAL REQUIREMENTS IN RESPONSE TO PARENTS' REQUEST FOR AN INDEPENDENT PSYCHOEDUCATIONAL EVALUATION

The evidence demonstrated, and the parties do not dispute, that Alameda followed statutory procedures regarding the denial of Parents' request for an independent educational evaluation. Parents initiated their request for an independent psychoeducational evaluation on June 24, 2020 by disagreeing with Alameda's December 2019 initial assessment. Alameda agreed to fund an independent educational evaluation on June 25, 2020.

Between June 25, 2020 and August 12, 2020, the parties conducted good faith negotiations including conversations, email correspondence, and a telephonic mediation. During the negotiation process, Parents were aided by their advocate and Student's caseworker from Regional Center of the East Bay.

Within this seven-week timeframe, Alameda provided Student with prior written notice, which included an explanation of why Alameda refused to fund an independent

psychoeducational evaluation by Dr. Grandison. Alameda also provided Parents with the SELPA policy regarding district criteria applicable for independent educational evaluations, lists with a total of five pre-approved assessors, and a notice of procedural safeguards.

On several occasions, Alameda asked Parents to demonstrate that unique circumstances justified an independent evaluation that did not fall within Alameda's criteria. Throughout the negotiation process, Parents provided Alameda with their reasons for selecting Dr. Grandison based upon her experience and training as well as Student's combination of needs arising from autism and attention deficit disorder. The parties exchanged letters stating their positions on August 3, 5, and 12, 2020, resulting in an impasse.

On August 14, 2020, Alameda filed a request for due process hearing to demonstrate that the evaluator requested by Parents did not meet SELPA criteria applicable for independent educational evaluations and that Parents did not provide adequate justification for selecting an evaluator falling outside of agency criteria. Alameda's request for due process hearing was filed without delay, merely two days after negotiations came to an impasse.

Alameda persuasively demonstrated that Alameda complied with necessary procedural requirements when responding to Parents' request for an independent psychoeducational evaluation. Moreover, Alameda filed their complaint without unnecessary delay after ongoing, consistent good faith efforts by both parties to resolve the dispute.

ALAMEDA PROPERLY RELIED ON AGENCY CRITERIA REQUIRING
INDEPENDENT PSYCHOEDUCATIONAL ASSESSORS BE EITHER A
LICENSED EDUCATIONAL PSYCHOLOGIST OR A CREDENTIALLED SCHOOL
PSYCHOLOGIST

Alameda argues that SELPA qualification criteria are consistent with state and federal laws and guidance as they were objective and were the same as the criteria Alameda used when initiating an evaluation. Alameda also argues that its qualification criteria did not interfere with Parents' right to an independent psychoeducational evaluation because school psychologists and licensed educational psychologists, by training, are fully capable of assessing a student with autism and attention deficit disorder.

Student argues that Alameda's qualification criteria are so narrow as to limit Parents' right to an independent psychoeducational evaluation because they can only choose from evaluators who have or had ties to school districts, resulting in bias or empathy toward Alameda. Student also argues that Alameda cannot require independent evaluators to be licensed as only persons employed by a school district may obtain such licenses. Additionally, Student argues that unique circumstances justify selection of Dr. Grandison, who does not meet Alameda's qualification criteria, as she is qualified to evaluate Student's combination of autism and attention deficit disorder. Student further argues that Dr. Grandison's qualifications far exceed those of a school psychologist or licensed educational psychologist.

If an independent evaluation is at public expense, the criteria under which the assessment is obtained, including location of the evaluation and qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates

an assessment, to the extent those criteria are consistent with the parent's right to an independent evaluation. (34 C.F.R. § 300.502(e)(1).) A district may set criteria for the location of where an evaluation is obtained and for the minimum qualifications of persons who conduct evaluations. (*Letter to Kirby*, 213 IDELR 233 (OSERS 1989).) A district's criteria may not be so narrow as to interfere with a parent's right to obtain an independent evaluation. (*Letter to Petska*, 35 IDELR 191 (OSEP 2001).)

School districts must provide parents with information about where the independent evaluation may be obtained, as well as the school district criteria applicable for independent evaluations. (34 C.F.R. § 300.502(a)(2).) A district may provide parent with a list of pre-approved assessors, but there is no requirement that the parent select an evaluator from the district-created list. (*Letter to Parker, supra*, 41 IDELR 155 (OSEP 2004).) When enforcing independent evaluation criteria, the district must allow parents the opportunity to select a qualified evaluator who is not on the list but who meets the criteria set by the public agency. (*Id.*)

Nothing prohibits public agencies from creating an exhaustive list of all qualified independent educational evaluators within a specified geographic area and requiring parents to choose a provider from the list, if the child's needs can be appropriately evaluated by the providers on the list. (*Letter to Young*, 39 IDELR 98 (OSEP 2003).) A public agency providing an exhaustive list must include in its policy that parents have the opportunity to demonstrate that unique circumstances justify selection of an independent educational evaluator who does not meet the agency's qualification criteria and who does not appear on the agency's list. (*Id.*)

The United States Supreme Court described the importance of independent evaluations, finding that the IDEA ensures parents have access to "an expert who can evaluate all the materials that the school must make available, and who can give an

independent opinion. They are not left to challenge the government without a realistic opportunity to access the necessary evidence, or without an expert with the fire power to match the opposition.” (*Schaffer, supra*, 546 U.S. 49, 60-61.)

ALAMEDA’S QUALIFICATION CRITERIA WAS APPROPRIATE

Alameda applied the same criteria for Student’s independent evaluation, including location of the evaluation and qualifications of the examiner, as the criteria that Alameda used when it initiated an evaluation. Specifically, qualification criteria required use of a school psychologist or licensed educational psychologist, unless parents demonstrated the appropriateness of using an evaluator meeting other qualifications.

Alameda implemented SELPA policy for independent educational evaluations. Alameda was one of five school districts comprising the North Region SELPA. North Region SELPA is referred to as SELPA, here. SELPA director Katy Babcock worked as director and program specialist for the SELPA for several years and was an experienced credentialed general and special education teacher. Babcock testified directly, without over-reaching, in a manner consistent with other Alameda witnesses and written communications between the parties. For these reasons she was a credible witness and her testimony is given significant weight.

SELPA, as Babcock explained, consist of various local school districts that can share resources including special education providers and programs to promote fiscal responsibility and address the varied needs of their respective students. SELPA policy required use of a school psychologist or licensed educational psychologist to conduct independent psychoeducational evaluations. SELPA policy included a list of potential assessor categories, including a staff member from another district in the SELPA, a staff

member from another SELPA, a public sector provider, and a private sector provider. Assessors were not limited to then current district or SELPA employees.

Babcock credibly explained the basis for aligning SELPA policy for independent evaluations with federal law, which provides that school districts must require the same qualifications of outside assessors as they require for their own staff. SELPA policy supported fiscal responsibility of school districts as clinical psychologists typically charged more for assessments than providers qualified under the policy. Moreover, qualified assessors had experience and training conducting assessments for eligibility, determining areas of need, and evaluating school programs and services to meet those needs.

California law requires school districts to use credentialed school psychologists to conduct any psychological assessment of students. (Ed. Code, § 56324(a).) Credentialed school psychologists must also conduct individual tests of intellectual or emotional functioning. (Ed. Code, § 56320(b)(3).) Licensed educational psychologists must have completed two to three years of full-time work as a credentialed school psychologist in public schools before taking a board examination to obtain their license. (Bus. & Prof. Code, § 4989.20.) Because of their experience as prior school psychologists and training and experience with school programs, licensed educational psychologists were determined by the SELPA as being appropriately qualified to conduct independent assessments.

Licensed educational psychologists may hold a master's or doctorate degree and work in private practice or for public agencies, including schools and SELPAs. (Bus. & Prof. Code, § 4989.14.) They are licensed to conduct educational evaluations and can administer and interpret diagnostic tests and diagnose psychological disorders related to academic learning processes, academic ability, learning patterns, achievement,

motivation, and personality factors. (*Id.*) Licensed educational psychologists provide psychological counseling for individuals, groups, and families as well as educationally related counseling services. (*Id.*) They consult with other educators and parents on issues of social development, behavior, and academics, conduct psychoeducational assessments to identify special needs, develop treatment programs and strategies to address problems of adjustment, and coordinate intervention strategies for management of individual crises. (*Id.*)

Student argued that licensed clinical psychologists were more qualified, than school or educational psychologists, to conduct educational assessments as they must hold a doctorate degree and can develop assessments, not just administer them. Dr. Sara Schiff, Dr. Cynthia Peterson, and Dr. Carina Grandison testified about their experience and training as licensed clinical psychologists who specialized as neuropsychologists. They answered questions frankly, without inflation and were found credible.

Dr. Schiff, Dr. Peterson, and Dr. Grandison each conducted numerous independent psychoeducational evaluations for districts in the SELPA, while SELPA qualification criteria were in effect. Each of the doctors had extensive education, training and experience as clinical psychologists. The bulk of their training on special education assessments and programming came from their extensive field experience. Each doctor contracted with Alameda and other districts in the SELPA, over the past several years, to conduct independent psychoeducational assessments. In the past, districts within the SELPA, including Alameda, found each doctor qualified enough to justify funding an independent educational evaluation with them. Each doctor opined that independent evaluations were contracted after a settlement agreement with a family. None of the

doctors testified that Alameda selected them as assessors after parents demonstrated unique circumstances justified deviating from SELPA qualification criteria.

Whether a neuropsychologist or licensed clinical psychologist has more or different training than a school psychologist or licensed educational psychologist does not demonstrate that they are better suited for conducting educational evaluations. From a purely logical view, it stands to reason that psychologists with specific training and experience assessing and developing programs for children with special needs, are better suited to conduct psychoeducational evaluations. However, that determination is neither required nor made here.

State and federal law do not require independent psychoeducational evaluations be conducted by the most well trained, most highly educated, or most experienced psychologists. The law requires that, for an evaluation at public expense, the criteria for qualifications of the examiner be the same as the criteria that the school district uses when it initiates an assessment, to the extent the criteria are consistent with parent's right to an independent assessment. (34 C.F.R. 300.502(e)(1).) Alameda met its burden of proving that it used the same criteria for independent psychoeducational evaluations that it used when initiating its own psychoeducational assessment.

ALAMEDA'S POLICY DOES NOT LIMIT PARENTS' ABILITY TO OBTAIN AN INDEPENDENT EDUCATIONAL EVALUATION

Alameda persuasively demonstrated that SELPA qualification criteria would not limit Parents' ability to obtain an independent educational evaluation for two reasons. First, an adequate number of credentialed school psychologists or licensed educational psychologists were available to conduct the independent assessment, as evidenced by Babcock and SELPA location criteria. Second, SELPA policy allows Parents to

demonstrate unique circumstances for using an assessor not meeting SELPA criteria. One such criteria is the unavailability of an appropriate assessor.

Alameda allowed a choice of assessors meeting qualification criteria within the greater Bay area, specifically including Marin, Sonoma, Napa, San Francisco, Contra Costa, Alameda, San Mateo, and Santa Clara Counties. The policy allowed parents to demonstrate the need for using personnel outside of these areas as well. Alameda, located in the East Bay, across the bridge from San Francisco, sits in a densely populated area. Student made no showing of a lack of available school psychologists or licensed educational psychologists within the geographical area. The evidence did not demonstrate that Student resided within a remote geographic location, with a lower population density, which necessarily would limit the availability of local qualified assessors.

Student argued that SELPA qualification criteria so limited Parents' choice of assessor as to preclude them from obtaining an assessment. Student reasons that school psychologists must only conduct work for the districts with which they are employed. Student's argument lacks merit for several reasons. First, the criteria allow assessment by licensed educational psychologists who may work for a public agency, private entity, or engage in private practice. Second, Student presented no evidence that school psychologists are limited to conducting assessments for only their employing districts. Third, the law does not support Student's argument. Student, in her closing brief, cites Business and Professions Code, section 2909. That section provides that school psychologists conduct psychoeducational assessments as part of the duties for which they were employed. The section does not limit school psychologists to conducting assessments solely for their own districts. Nothing in the law prevents school psychologists from conducting psychoeducational assessments for

other districts or SELPAs. California Code of Regulations provides that school districts, county offices of education, and SELPAs can contract with school psychologists to conduct assessments of intellectual or emotional functioning pursuant to Education Code, section 56320, subdivision (b)(3). (5 C.C.R. § 3029.) The evidence did not support Student's contention that school psychologists are limited to conducting assessments only for the districts that employ them.

Student also argues that school psychologists and licensed educational psychologists are inherently biased toward districts, thus preventing parents from obtaining an objective third-party opinion. Student did not offer evidence of school psychologist bias or of the lack of bias by private evaluators being paid under contract. Licensed educational psychologists can be employed by a public agency or maintain a private practice. No evidence demonstrated that that category of assessor is any more, or less, biased than the others.

A district's criteria may not be so narrow as to interfere with a parent's right to obtain an independent evaluation. (*Letter to Petska*, 35 IDELR 191 (OSEP 2001).) Put another way, qualification criteria can be the same as criteria the district uses in conducting its own evaluations, so long as the public agency's criteria for evaluators do not prohibit a parent from obtaining an independent educational evaluation. (71 Fed. Reg. 46689 (August 14, 2006.)) Because of the availability of qualified assessors and lack of a showing of bias, Student did not demonstrate that Parents were prohibited from obtaining an independent educational evaluation based upon SELPA qualification criteria.

The evidence demonstrated that Student's advocate recommended Dr. Grandison conduct the independent assessment before Parents were provided with Alameda's initial list of assessors. After that point, Parents expressed no willingness to consider any

of the assessors offered by Alameda, any other similarly qualified assessor on their advocate's list, or any other school psychologist or licensed educational psychologist throughout the several counties within which Parents could have chosen an assessor under SELPA criteria.

Finally, no State or federal law or guidance finds that requiring an independent assessor to hold the same credential or license required by a district assessor interferes with a parent's right to an independent evaluation.

PARENTS DID NOT DEMONSTRATE UNIQUE CIRCUMSTANCES JUSTIFYING USE OF DR. GRANDISON

Alameda persuasively demonstrated that Student's needs did not constitute unique circumstances justifying a departure from SELPA qualification criteria. In the weeks leading up to their request for assessment and in the weeks that followed, Parents adeptly explained to Alameda Student's deficits and need for assessment. Parents described Student's social emotional deficits led to frustration and meltdowns, on-campus elopements, and a recent off-campus elopement. On June 9, 2020, Parents wrote to program specialist Dr. Lin regarding the need for an assessment for dyscalculia and dyslexia, which they opined arose after several months of at-home education due to the Coronavirus pandemic. Parents shared Student's recent diagnosis of autism by Student's psychiatrist and the Regional Center of the East Bay clinical psychologist with Alameda.

Special education director Pamela Kazee explained, to Parents and at hearing, reasons for denying an assessment by Dr. Grandison. Kazee had extensive education, training, and experience in the field of education. She served as an educational diagnostician for a university and a school district, in addition to having extensive

experience analyzing assessment findings and reports. She answered questions thoughtfully and her testimony was not disturbed on cross-examination. She was credible and reliable.

Kazee wrote to Parents on July 27, 2020, after mediating with Parents and their advocate on their choice of assessor. Kazee considered Parents' request and consulted with specialists, school psychologists, administrators, and special education directors. She reviewed some of Dr. Grandison's prior evaluations. She declined to fund an evaluation by Dr. Grandison based upon review of Dr. Grandison's prior assessments and reports, Dr. Grandison not following insurance and contractual procedures, and Dr. Grandison not meeting qualification criteria, among other reasons not relevant here. Kazee offered Parents a choice of anyone on their advocate's list of qualified assessors as well as anyone else meeting SELPA criteria.

Parents believed Dr. Grandison was a necessary assessor because she exceeded Alameda's minimum qualification criteria, had extensive experience conducting independent psychoeducational evaluations for the SELPA and Alameda, and had experience and education necessary to distinguish behaviors and traits to differentiate autism from attention deficit disorder, as Student had been diagnosed with both. Whether Dr. Grandison had more years of experience or had more extensive education and training than other qualified evaluators does not, by itself, establish justification for departing from SELPA qualification criteria.

Alameda persuasively demonstrated, through Kazee, Babcock, and Dr. Lin, that school psychologists and licensed educational psychologists have the education and training required to assess IDEA eligibility categories and all areas of a student's unique educational need. Each determined that Dr. Grandison was not uniquely qualified to assess Student's needs, as related by Parents. Student needs in the areas of autism and

attention deficit frequently arise amongst school-aged children and are regularly assessed by school and educational psychologists. (*See, Capistrano Unified Sch. Dist.*, 106 LRP 63886 (SEA CA 2006) (School psychologist appropriately qualified to conduct assessment of student with suspected or diagnosed attention deficit disorder or attention deficit hyperactivity disorder to determine eligibility, needs, and make program recommendations.); *See also, Joint Policy Memorandum*, 18 IDELR 116 ((OSERS 1991).)

Student did not establish justification for departing from SELPA qualification criteria. Dr. Schiff, Dr. Peterson, and Dr. Grandison did not testify that Student presented with needs so unique that only a neuropsychologist or licensed clinical psychologist were qualified to assess her for eligibility and make recommendations for placement and services. Dr. Grandison explained that she leaned on her neuropsychology training for cases involving seizures or brain injury due to car accidents and did not think that a school psychologist would have that kind of training. While she opined that children with more than one diagnoses can be complex, she did not establish that school psychologists were not qualified to assess such children.

Alameda met its burden of proving that it properly denied Parents' request to fund an independent psychoeducational evaluation by Dr. Grandison when it relied on agency criteria that the assessor be either a licensed educational psychologist or a credentialed school psychologist. Alameda demonstrated that appropriately qualified assessors existed within the densely populated geographical area from which it allowed assessors to be chosen. Alameda further demonstrated that unique circumstances did not exist to justify deviation from qualification criteria.

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: Alameda properly denied Parent's request to fund an independent educational evaluation by Dr. Carina Grandison by relying on agency criteria that the assessor either be a licensed educational psychologist or a credentialed school psychologist. Alameda prevailed on Issue 1.

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/

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings