

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

---

CASE NO. 2020040212

---

WESTMINSTER SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

---

DECISION

JULY 14, 2020

On April 6, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Westminster School District naming Student. OAH granted the parties request for continuance on April 22, 2020. Administrative Law Judge Linda Johnson heard this matter via videoconference in San Diego, California on June 9 and 10, 2020.

Attorney Justin Shinnfield represented Westminster. Darek Jaronczyk, Westminster's Student Services Executive Director, attended the hearing on

Westminster's behalf. Parents represented Student. OAH provided a Vietnamese interpreter for Mother.

At the parties' request, OAH continued the matter to June 24, 2020, for written closing arguments. Westminster submitted its closing brief on June 24, 2020. Student did not submit a closing brief. The record was closed, and the matter was submitted on June 24, 2020.

## ISSUE

1. Did Westminster's 2020 triennial assessment meet all legal requirements such that Student is not entitled to independent educational evaluations 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).) Here, Westminster requested the due process hearing and has the burden of proof. 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 six years old and in kindergarten at the time of hearing. Student resided within Westminster's geographic boundaries at all relevant times. Student was eligible for special education as a student with a speech and language impairment.

Westminster conducted Student's triennial reevaluation in January and February 2020. Mother disagreed with the triennial reevaluation and requested independent educational evaluations in the areas of psychoeducation, speech and language, occupational therapy, and a functional behavioral assessment. Westminster filed a due process complaint alleging all four district assessments were appropriate.

ISSUE: DID WESTMINSTER'S 2020 TRIENNIAL ASSESSMENT MEET ALL  
LEGAL REQUIREMENTS SUCH THAT STUDENT IS NOT ENTITLED TO  
INDEPENDENT EDUCATIONAL EVALUATIONS AT PUBLIC EXPENSE?

Westminster contends it conducted a legally sufficient triennial assessment and that its assessors were well qualified and selected appropriate test methods and instruments. Westminster further contends the instruments it used were valid and well recognized and it complied with all procedural requirements. Westminster contends Student is not entitled to independent educational evaluations at public expense.

Student contends the assessors did not know Student well enough to conduct an accurate assessment. Student further contends he is not able to replicate similar skills at home as the assessors noted so the assessment must be incorrect. Student contends he has behavior problems that were not addressed in the assessment.

A local education agency assessment is appropriate if provides notice to parents, uses a variety of assessment tools and strategies, does not use any single measure or assessment as the sole criterion for determining an appropriate program for the student, and uses technically sound instruments. (20 U.S.C. § 1414(b)(2).) Additionally, the assessment must be administered by trained and knowledgeable personnel. (20 U.S.C. § 1414(b)(3)(A)(iv).)

To assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights and safeguards under the IDEA and state law. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in language easily understandable by

the general public, in parents' native language or other mode of communication parents use, explain the assessments that the district proposes to conduct, and provide that the district will not implement an individualized education program, referred to as an IEP, without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The assessment must be completed, and an IEP team meeting held to discuss the results of the assessment, within 60 days of the date the district receives the signed assessment plan, not including school breaks of five days or more. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, § 56302.1, subd. (a); Ed Code § 56344, subd. (a).)

Westminster sent an assessment plan to Parents on December 19, 2019. Westminster proposed to assess Student in the areas of academics, health, intellectual development, language and speech, motor development, social-emotional behavior, and adaptive behavior. The assessment plan was written in English with portions translated into Vietnamese. Parents spoke both English and Vietnamese and Student's primary language was English. During the hearing Father spoke solely in English. Mother spoke in both English and Vietnamese and at times answered questions asked in English before the interpreter could interpret the question into Vietnamese. The assessment plan explained the assessments Westminster sought to conduct and explained that the resulting IEP would not be implemented without parental consent. The evidence established that Parents understood Westminster's assessment plan. Therefore, Westminster's assessment plan met all legal requirements.

Mother signed the assessment plan on December 19, 2019. Mother requested that Westminster also conduct a functional behavior assessment; which it did. Westminster was on winter break from December 20, 2019, through January 3, 2020. Westminster conducted the assessments during January and February 2020.

Westminster held an IEP team meeting on March 2, 2020, to discuss the results of all the assessments. Westminster held the IEP team meeting within the 60-day timeline.

A student may be entitled to an independent educational evaluation if parents disagree with a public agency assessment and request an independent educational evaluation at public expense. (34 C.F.R. 300.502(b)(1).) If a parent disagrees with a public agency assessment and requests an independent educational evaluation, the public agency must, without unnecessary delay, either fund the evaluation or file a due process complaint to show its assessment is appropriate. (34 C.F.R. 300.502(b)(2).)

Mother disagreed with the results of the triennial assessment and requested independent educational evaluations on March 2, 2020. Westminster declined to fund independent educational evaluations and filed a due process complaint on April 6, 2020. Westminster filed its due process complaint within 35 days of Mother's notification that she disagreed with the assessment. Westminster responded without unnecessary delay.

## ASSESSOR QUALIFICATIONS

Assessments must be conducted by individuals who are knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).) The assessments must also be conducted by persons competent to perform the assessment. (Ed. Code, § 56322.) The competency of an assessor is determined by the local educational agency. (*Ibid.*) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).)

Kristin Lomeli conducted the intellectual development, social emotional behavior, and adaptive behavior portions of the psychoeducational evaluation as well as the functional behavioral assessment. Lomeli had a bachelor's degree and an education

specialist credential in school psychology. Lomeli had been a school psychologist for two years and worked for Westminster since April 2019. At the time Lomeli conducted Student's assessment, she had completed 65 psychoeducational assessments. Lomeli was competent to perform the assessment.

Seng Chang conducted the academic portion of the triennial assessment. Chang had a master's in special education and an education specialist credential. Chang had over 20 years of teaching experience and had conducted over 100 academic assessments for special education. Chang was competent to perform the assessment.

Ryan Kudo conducted the speech and language portion of the triennial assessment. Kudo had a master's degree in communication disorders, was a California-licensed speech-language pathologist, had a speech-language pathology credential, and had a certificate of clinical competence in speech-language pathology. Kudo had been a speech-language pathologist for over 10 years and had worked for Westminster since October 2012. Kudo assessed at least 20 students a year and at the time Kudo assessed Student he had conducted over 200 speech and language assessments for special education. Kudo was competent to perform the assessment.

Rebecca Kim conducted the motor development/occupational therapy portion of the triennial assessment. Kim had a master's degree in occupational therapy, and was a board certified in occupational therapy both nationally and in California. Kim had been an occupational therapist for over 12 years and had conducted over 500 occupational therapy assessments for special education. Kim was competent to perform the assessment.

Sue Buck conducted the adapted physical education portion of the assessment. Buck had a master's degree in education, a special education credential in adapted

physical education, and a single subject credential in physical education. Buck had been an adapted physical education teacher for 36 years and conducted on average 30 adapted physical education assessments for special education each year. Buck was competent to perform the assessment. However, Mother did not request an independent educational evaluation in the area of adapted physical education so Buck's report will not be discussed further.

Lomeli compiled the psychoeducational, speech and language, motor development/occupational therapy, and adapted physical education reports into one multidisciplinary report for Student's triennial reassessment. Westminster proved all the assessors who conducted assessments for Student's triennial reassessment were qualified and competent to perform the assessments.

## ASSESSMENT TOOLS

A local educational agency must assess a special education student in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In assessing a child with a disability, the assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. (34 C.F.R. § 300.304(c)(6).)

School districts are required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including



information provided by the parent, that would assist in determining the educational needs of a child. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) Assessments must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, along with physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need. (34 C.F.R. § 300.304(c)(2).)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests must be selected and administered to produce results that accurately reflect the student's aptitude, achievement level, or any other factors the test purports to measure. (Ed. Code, § 56320, subd. (d).)

Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory. (20 U.S.C. § 1414(a)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The materials must also be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(ii); Ed. Code, § 56320, subd. (a).) In addition, an assessor must produce a written report of each assessment that includes:

- whether the student may need special education and related services;
- the basis for making that determination;
- the relevant behavior noted during the observation of the student in an appropriate setting;

- the relationship of that behavior to the student's academic and social functioning; and
- the educationally relevant health and development, and medical findings, if any.

(Ed. Code, § 56327, subds. (a)-(e).)

The benefits of an appropriate public education through special education is not limited to academics, but also in aiding a child's social and emotional growth to support them academically, behaviorally, and socially. (*County of San Diego v. California Special Education Hearing Office, et al.* (9th Cir. 1996) 93 F.3d 1458, 1467.)

## PSYCHOEDUCATIONAL ASSESSMENT

Lomeli reviewed Student's records, observed him on the playground and in class, administered several assessments, and interviewed Parents and Student's classroom teacher. Lomeli produced a 67-page written report that included the psychoeducational, health, speech and language, motor development/occupational therapy, and adapted physical education assessments.

In reviewing Student's records, Lomeli reviewed Student's original Regional Center evaluation, Westminster's 2018 initial special education assessment, Student's IEPs and progress on previous goals, an independent educational evaluation conducted by an occupational therapist, and Student's academic benchmark test scores. Lomeli thoroughly reviewed Student's previous abilities, areas of concern, and assessor observations. Lomeli noted Student's previous diagnoses including his medical diagnosis of autism. Lomeli used parent interview forms for both Mother and Father and interviewed Student's teacher. Lomeli included strengths and concerns from all three interviews.

Lomeli included the health assessment the school nurse conducted. The health assessment included the nurse's observations as well as current diagnoses, hearing, and vision information. The health assessment also included Parents' concerns regarding Student's health and his health history.

Lomeli described Student's behavior during testing on the three days she assessed him. Lomeli included the number of prompts Student required to finish tasks and the testing areas Student struggled with. Student had some difficulty with copying items but when prompted to do his best he was able to complete the task. Student was proud of himself when he was confident in an answer and commented on his abilities to Lomeli. Student was able to draw a character from a television show and describe the character to Lomeli and was able to count to 100 by 10s.

Lomeli also observed Student in the classroom and on the playground. In the classroom Student could follow directions, raise his hand to answer a question, and wait his turn before answering. On the playground Student played independently on the slide, waited his turn, and followed directions when it was time to line up for lunch.

Mother disagreed with Lomeli's observations. Mother did not observe Student to have the same skills or able to complete the same tasks in the home environment. Student could not complete academic work at home, he fought with his siblings, and was defiant. Student and his siblings received applied behavior analysis at home from Huong Nguyen of Hearts of ABA. Nguyen had a master's degree in education, a teaching certificate, 20 years of experience working with students with autism, and was a board certified behavior analyst. Nguyen had worked with Student's siblings for some time, but did not start working with Student until May 2020, and did not assess him until June 1, 2020. Nguyen only worked with Student in the home environment and focused

on behavior. At times Nguyen worked on academic work with Student, however, the focus was on behavior, not his academics. Nguyen observed similar aggressive behaviors that Mother described, but opined that Student was mimicking his siblings.

Lomeli observed Student in multiple environments and detailed her observations. Lomeli gathered relevant functional and developmental information from Parents, Student's teacher, and her observations. Lomeli understood Mother's concerns about Student's behavior, but did not observe the same behavior in the school environment. Lomeli's testimony was more persuasive than Mother's or Nguyen's because her focus was on Student's behavior in the classroom setting.

Lomeli administered:

- the Differential Ability Scales, Second Edition;
- the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition, referred to as Beery;
- the Test of Visual Perceptual Skills, Fourth Edition; and
- the Comprehensive Test of Phonological processing, Second Edition.

Lomeli also administered behavior rating scales from the Behavior Assessment System for Children, Third Edition, the Conners 3rd Edition, and the Autism Spectrum Rating Scales. Lomeli chose assessments that were not racially, culturally, or sexually discriminatory and administered them in Student's native language, English. Lomeli followed the protocols for all of the assessments.

Lomeli assessed Student's cognitive functioning using the Differential Ability Scales. Student's general conceptual ability was in the average range. Student scored in the average range on all subtests, except for working memory. Student's working

memory was in the very low range with a standard score of 69. Lomeli gathered additional data regarding Student's working memory from observation and teacher reports. Student was able to recall and follow multiple-step directions and follow group instructions.

Lomeli used the Beery and the Test of Visual Processing to assess Student's visual and sensory processing. The Beery assesses visual-motor skills by having students copy geometrical images. Student scored in the average range. Student could copy simple and complex geometric figures, match various objects, and draw within a specified area. On the Test of Visual Processing, Student's overall score was in the low range. Student was able to discriminate dominant features of an object, but struggled with memory tasks that required him to recall a picture. Student scored in the average range when perceiving objects in relation to others, but struggled when asked to identify shapes when rotated or presented in a different size. Student scored in the very low range in remembering visual patterns in the correct order. Student was able to identify an object from a complex background and identify a figure when only presented with fragments of the figure. Lomeli concluded Student would benefit from a visual schedule, having instructions highlighted or in a different color, and having examples of tasks. Lomeli relayed this information to the IEP team during the IEP team meeting.

Lomeli used the Comprehensive Test of Phonological Processing to assess Student's auditory processing skills. Student had below average phonological awareness, his sound matching and ability to remove segments from words scores were average, but his blending words score was poor. Based on these scores Lomeli determined Student had the necessary skills to read at his grade level. Student's phonological memory was average. Student's rapid symbolic and non-symbolic naming scores were very poor. Lomeli compared the scores to Student's scores on the

Differential Ability Scales and the Dibels Letter Fluency task and determined the scores were unexpected. Student was able to complete similar tasks with greater success on those other instruments. Lomeli concluded the general education kindergarten curriculum included all components to address phonics, morphology, grammar, and vocabulary. Lomeli also compared her findings to the speech and language report which was consistent with her findings and noted Student would receive instruction in the skills through speech and language services.

Chang used the Brigance Comprehensive Inventory of Basic Skills Two and classroom observations to determine Student's current academic functioning. Student scored average to above average in all academic areas. Student was able to identify letter sounds, articulate initial and final sounds of words, and distinguish pairs of words that sound alike. Student could identify all 11 colors presented with and recite and identified all 26 letters of the alphabet. Student could write his first and last name, draw a person with recognizable body parts, print 23 capital letters, and print 25 lowercase letters. Student could count to 109, identify numbers up to 100, join groups of like objects with sums to 10, write numbers up to 51, and match numbers one to 10 with the correct quantity.

Mother disagreed with Chang's assessment and did not believe Student could complete the tasks Chang had Student successfully complete. Nguyen observed Student in the home environment working on academics several months after Chang's assessment. When Nguyen observed Student he missed a letter in his name every time he wrote it, did not know the "b," "d," "g," or "y" sounds when playing a game, and could not correctly trace "b," "d," "g," or "y." Nguyen did not observe Student in the school environment and recognized that at home he did not exhibit all the skills he possessed.

Chang's testimony was more persuasive as she assessed Student and observed him in the school environment.

Lomeli determined Student did not meet the eligibility category criteria for specific learning disability as he did not demonstrate a severe discrepancy between his intellectual ability and academic achievement. Lomeli did note a processing disorder in short term memory and discussed accommodations with the IEP team.

Lomeli used the Conners rating scales to assess Student's attention and executive functioning. Lomeli gave rating scales to both Parents as well as Student's teacher, Raquel Martinez. Neither Father nor Martinez endorsed any elevated scores. Martinez rated Student with a 19 percent probability of attention deficit hyperactivity disorder and Father rated Student with an 11 percent probability. Mother however, rated Student as having a 91 percent probability of attention deficit hyperactivity disorder and all very elevated scores.

Lomeli also provided rating scales to Parents and Martinez for the Behavior Assessment System for Children. Martinez and Father both rated Student in the average range in all areas. Mother rated Student average for anxiety and withdrawal, at risk for hyperactivity and attention problems, and significant concern for aggression, conduct problems, depression, somatization, and atypicality.

Based on the results of the Conners, Behavior Assessment System for Children, observations, and teacher and Parent interviews Lomeli concluded Student exhibited behavior problems at home that he did not experience in the school environment. Lomeli concluded Student did not meet the eligibility criteria for other health impairment because he did not present with significant hyperactivity or impulsivity that adversely affected his educational performance. Student did exhibit mild inattention

after prolonged assessment periods but was easily redirected. Although Student exhibited aggression and behavior problems in the home environment, Student did not exhibit the same behaviors at school. Nguyen corroborated this information. Although Nguyen did not observe Student in the school environment, and did not start working with him until months after Westminster conducted its assessment, Nguyen observed that Student had the skills necessary to communicate his needs and wants but mimicked his siblings' behavior at home.

Lomeli used the Autism Spectrum Rating Scales to look at characteristics associated with autism. Martinez rated Student average in all areas except adult socialization, in which she rated him low. Father rated Student average in all areas except social communication and peer socialization in which he rated Student elevated. Mother rated Student average in behavior rigidity, elevated in unusual behavior and stereotypy, and very elevated in all other areas.

Lomeli used the results of the speech and language assessment, observations, teacher and Parents' input, and the Autism Spectrum Rating Scales to determine Student did not meet the special education criteria for autism. Mother disagreed with Lomeli and thought Student should be eligible under the disability category of autism. Although Student was diagnosed with autism in February 2016, it did not impact his ability to access education in the school environment. Lomeli used a variety of assessment tools and strategies to consider Student's eligibility under autism. Lomeli's testimony and opinion was more persuasive. Mother did not provide any evidence that Student exhibited the same behaviors at school that he did at home. Furthermore, Nguyen did not observe Student in the classroom setting.



Lomeli's psychoeducational assessment was thorough and complete. Lomeli's testimony was uncontroverted and her findings were given significant weight. Westminster proved that Lomeli's psychoeducational assessment met all legal requirements.

## FUNCTIONAL BEHAVIORAL ASSESSMENT

Lomeli also conducted a functional behavioral assessment as part of Student's triennial reassessment. Mother requested the functional behavioral assessment because she was concerned with Student's aggressive and self-injurious behavior. At home Student hit his head, scratched his legs, and was aggressive toward his siblings. At school Student did not exhibit any of the behaviors Mother observed at home. During the first few weeks of the 2019-2020 school year, Student inappropriately touched other students on the buttocks while on the playground. Martinez redirected Student frequently and implemented a positive behavior system to praise Student's prosocial behavior. Within a few weeks Martinez was able to fade the reinforcement system as Student stopped inappropriately touching other students.

Lomeli observed Student six different times over the course of five days. Lomeli observed Student at different times during the day and while Student was at recess and in the classroom. Lomeli looked for inappropriate touching, self-injurious behaviors, aggression, and off-task behaviors. Student did not engage in any inappropriate touching, self-injurious behaviors, or aggression during Lomeli's observations. Student was off task four times during two of the six observations. Student was easily redirected each time. Lomeli also gathered data on another student in the classroom and in comparison, Student was off task less than his same-age peer. Lomeli concluded Student's off-task behavior occurred during transitions and the function was to gain

access to a preferred item or gain peer attention. Student responded to positive praise and the classroom reinforcement system. Lomeli determined Student did not require a positive behavioral intervention plan.

Nguyen reviewed Lomeli's functional behavioral assessment and conducted an independent functional behavioral assessment. Nguyen did not conduct her assessment until June 1, 2020, and the assessment occurred solely in the home setting. Nguyen was concerned that Lomeli's assessment did not address aggressive or self-injurious behaviors. Student displayed aggressive behavior toward his siblings and self-injurious behavior at home. Nguyen acknowledged that she did not observe Student in the school setting and that Student had the skills necessary to express his wants and needs but seemed to choose not to use his language skills at home. Nguyen opined that Student may have been mimicking his siblings at home.

Lomeli's testimony and functional behavioral assessment was more persuasive than Nguyen's as it was completed in the school environment. Moreover, Nguyen's assessment was completed three months after Lomeli's assessment and after Student had been distance learning for two-and-a-half months because of the Covid-19 pandemic. Lomeli's functional behavioral assessment was thorough and complete. Lomeli's testimony was uncontroverted and her findings were given significant weight. Westminster proved that Lomeli's functional behavioral assessment met all legal requirements.

## SPEECH AND LANGUAGE ASSESSMENT

Kudo conducted the speech and language assessment. Kudo reviewed records, interviewed Student's teacher, observed him, and assessed him using several standardized measures and informal speech and language samples. Kudo met with

Mother several times during the beginning of the 2019-2020 school year to understand her concerns. Kudo chose assessments that were not racially, culturally, or sexually discriminatory and administered them in Student's native language, English. Kudo recognized that both English and Vietnamese were spoken in the home and interpreted the scores with caution. Kudo followed the protocols for all of the assessments.

Kudo observed Student on the playground and in the classroom. Student was able to communicate with his peers and teacher. Student made eye contact and appropriately oriented his body when speaking to others. Student raised his hand in the classroom and waited to be called on before answering.

Kudo administered the Oral and Written Language Scales, Second Edition to assess Student's expressive and receptive language abilities. Student's overall language development was below average. Student's listening comprehension was just below average, but his oral expression was deficient. Kudo also administered the Clinical Evaluation of Language Fundamentals, Fifth Edition, which is designed to further assess language and communication disorders. Student's receptive language was in the average range. Student's sentence comprehension, ability to understand relationships between words, and ability to follow directions were all average. Student's expressive language was in the low to moderate range. Student's word structure and formulated sentences were below average and his ability to recall sentences was average. Student's verbal and nonverbal pragmatic skills were average and age appropriate for the school setting. Kudo used multiple different measures to determine Student's speech and language needs.

Kudo also administered the Receptive and Expressive One-Word Picture Vocabulary Tests, Fourth Edition. Student's overall scores on both assessments were

average. Student's mean length of utterances was 5.36 morphemes per utterance. On the Goldman-Fristoe Test of Articulation, Third Edition Student scored below average, within the first percentile. Student made numerous sound errors and substitutions. During a six-minute conversation Kudo could understand 196 of 222 words Student spoke. Student's vocal quality and fluency were not areas of concern.

Kudo determined Student's receptive language, pragmatic language, voice, and verbal fluency were not areas of concern. Kudo determined Student's articulation and expressive language were areas of unique need. Kudo included the information in his written report and shared the findings with the IEP team. Kudo recommended that Student continued to be eligible for special education under the category of speech and language impairment. Mother disagreed with Kudo's assessment because she did not think Student spoke well and his doctor could not understand him. Mother's concerns about Student's language are similar to Kudo's assessment of Student's areas of need. Student did not provide any evidence that Kudo's assessment was not valid.

Kudo's speech and language assessment was thorough and complete. Kudo's testimony was uncontroverted and his findings were given significant weight. Westminster proved that Kudo's speech and language assessment met all legal requirements.

#### MOTOR DEVELOPMENT/OCCUPATIONAL THERAPY ASSESSMENT

Kim conducted the motor development/occupational therapy assessment. Kim reviewed records, interviewed Student's teacher, observed him, and assessed him using the Benbow Observation of Hand Skills, Bruininks-Oseretsky Test of Motor Proficiency, Second Edition, and the Sensory Processing Measure classroom and home forms. Kim chose assessments that were not racially, culturally, or sexually discriminatory and

administered them in Student's native language, English. Kim followed the protocols for all of the assessments.

During testing Student was not distracted by the sounds in the office or Kim's typing. Student sat upright in a chair but toward the end of testing Student needed a reminder to sit tall. Student's range of motion and muscle strength were within functional limits. Student was able to sit on the floor with the soles of his feet together, sit upright in a chair, stand, ambulate, climb up and down stairs on the playground, and run. Student could stabilize the muscles in his shoulders so the smaller muscles in his hand could cut, print, and feed himself. Student completed all 10 hand skill performance areas. Student had average fine motor precision and integration, and manual dexterity. Student could open and close a backpack and take items in and out, use the restroom independently, complete all handwashing steps independently, activate the drinking fountain, pull out and push in his chair, use pencils, crayons, scissors, glue sticks, and a computer. Student was able to carry a lunch tray without spilling, use a fork to feed himself, and use a straw.

To assessing Student's sensory processing Kim gave Martinez a classroom rating scale. Student had typical responses to all sensory areas. Kim also gave Parents rating scales. Father reported Student was typical in all areas. Mother reported Student had some problems in social participation, vision, and hearing. Mother reported Student had definite dysfunction in touch, body awareness, balance and motion, and planning and ideas. Specifically, Mother reported Student was distressed in unusual visual environments such as a bright, colorful room or dimly lit rooms, and easily distracted by background noises such as a lawn mower outside, an air conditioner, refrigerator or fluorescent lights. Mother reported Student preferred to touch rather than be touched and became distressed by having his nails cut. Mother reported Student had trouble

finding things in a pocket, bag, or backpack using touch only, he seemed to ignore or not notice strong odors that other children react to, grasped objects so tightly or loosely that it was difficult to use the object, and seemed driven to seek activities such as pushing, pulling, dragging, lifting, and jumping. Mother reported Student seemed to exert too much pressure for the task such as walking heavily, slamming doors, or pressing too hard when using pencils and crayons. Mother reported Student bumped or pushed other children, broke things from pressing or pushing too hard, fell out of chair when shifting his body, showed distress when his head was tilted away from the upright vertical position, and showed poor coordination and appeared to be clumsy.

Kim acknowledged Mother's concerns but did not observe any of the same behaviors in the school environment. Mother did not provide any evidence that Student exhibited any of the behaviors in the school environment. Kim determined Student demonstrated functional sensory processing skills and was able to access his education in the school environment. Kim recommended supports and discussed her findings and recommendations with the IEP team. Westminster proved that Kim's motor development/occupational therapy assessment met all legal requirements.

Westminster proved its triennial reassessment was appropriate. Consequently, Student is not entitled to independent educational evaluations at public expense.

## 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: Westminster's 2020 triennial assessment met all legal requirements such that Student is not entitled to independent educational evaluations at public expense. Westminster prevailed on the sole Issue for hearing.

## ORDER

1. Westminster's 2020 triennial assessment met all legal requirements. Student is not entitled to independent educational evaluations at public expense.

## 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.

Linda Johnson

Administrative Law Judge

Office of Administrative Hearings