

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF
WESTERN PLACER UNIFIED SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020090640

DECISION

NOVEMBER 24, 2020

On September 21, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Western Placer Unified School District, naming Student as respondent. Administrative Law Judge Claire Yazigi heard this matter by videoconference on October 20, 21, 22 and 23, 2020.

Attorneys Tilman Heyer and Sabrina Buendia, Attorneys at Law, represented Western Placer. Susan Watkins, Special Education Director, attended the hearing on Western Placer's behalf. Parents represented Student and attended all days. Parents were accompanied by Dr. Robert Closson, advocate.

At the parties' request, the matter was continued to November 16, 2020 for closing briefs. Student filed a closing brief on November 16, 2020 and filed an amended

closing brief after close of business on November 16, 2020. Student's amended closing brief did not substantively change Student's position, and was considered. Western Placer did not file a closing brief. The record was closed, and the matter was submitted on November 16, 2020.

ISSUE

1. Was Western Placer's February 28, 2020 multidisciplinary assessment appropriate, such that Student is not entitled to an IEE 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 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).) As the filing party, Western Placer bears the burden of proof in this case. 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 three years old and in preschool at the time of hearing. Student resided within Western Placer's geographic boundaries at all relevant times. Student is eligible for special education under the category of Speech or Language Impairment.

ISSUE 1: WAS WESTERN PLACER'S FEBRUARY 28, 2020

MULTIDISCIPLINARY ASSESSMENT APPROPRIATE, SUCH THAT STUDENT IS NOT ENTITLED TO AN IEE AT PUBLIC EXPENSE?

Western Placer contends that its initial multidisciplinary assessment of Student met all procedural and substantive legal requirements of the IDEA. Accordingly, Western Placer contends Student is not entitled to an independent multidisciplinary evaluation at public expense. Parent further sought a Functional Behavior Assessment conducted by a Board Certified Behavior Analyst. Western Placer also seeks a determination that it assessed Student in all areas of need and therefore, Student is not entitled to a Functional Behavior Assessment at public expense. A determination that Western Placer assessed Student in all areas of need is beyond the scope of this hearing. Additionally, Western Placer did not conduct a Functional Behavior Assessment.

Accordingly, it cannot overcome an assertion that Student requires such an assessment by defending its multidisciplinary assessment. At issue herein is solely whether the multidisciplinary assessment met all legal requirements such that Student is not entitled to an independent multidisciplinary assessment at public expense. No findings are reached herein regarding whether Western Placer assessed Student in all areas of need. No findings are reached as to whether Student's needs require a Functional Behavior Assessment. Both questions are beyond the scope of this hearing.

Student argues that Western Placer's conclusion that Student did not qualify for special education under the category of Autism was incorrect and that its occupational therapy assessment did not thoroughly assess Student's sensory processing. Additionally, Student contends that Western Placer should also have assessed for attention deficit hyperactivity disorder, maladaptive behaviors like elopement and tantrums, and conducted a Functional Behavior Assessment. For the reasons stated above, at issue in this case is whether Western Placer's multidisciplinary assessment was legally compliant. Whether Student's needs require a Functional Behavior Assessment or additional assessments covering areas not addressed in the multidisciplinary assessment is beyond the scope of this hearing. Similarly, Student's assertion that the IEP team reached an incorrect eligibility determination is beyond the scope of this hearing. Accordingly, no findings are made herein regarding eligibility, whether Student has additional needs not evaluated in the multidisciplinary assessment, or whether Student requires a Functional Behavior Assessment.

Legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination on the basis of sex, race, or culture. The assessments must be administered according to the assessment producer's instructions, in a language and

form most likely to yield accurate results regarding the student's academic, developmental and functional abilities. (20 U.S.C. § 1414 (b)(3)(A); Ed. Code § 56320, subd. (a) and (b)(3).) Assessors are required to use a variety of technically sound assessment tools and strategies to gather relevant information, including information provided by a parent, to assist in determining whether the child has a disability; and, if so, the relative contribution of cognitive and behavioral factors, in addition to physical and developmental factors. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code § 56320, subd. (b).) Assessors are prohibited from relying on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (20 U.S.C. § 1414 (b)(2)(A); Ed Code. § 56320, subd. (e).)

The term assessment in California law has the same meaning as the word evaluation under the IDEA. (Ed. Code, § 56302.5.) A school district must give a parent a written proposed assessment plan, accompanied by a copy of parent's procedural safeguards under the IDEA and California state law. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300 (c); Ed. Code §§ 56321, subd. (a), and 56381, subd. (f)(1).) The assessment plan must provide parents written notice that meets the statutory requirements of California Education Code section 56321. The assessment plan must notify a parent that an IEP team meeting will be convened following completion of the assessment. The assessment plan must notify a parent that the IEP meeting will include a discussion of whether student is an individual with special needs, the assessment results, the educational recommendations, and the reasons for the recommendations made. (Ed. Code § 56329(a)(1).)

The assessment plan itself must be in language easily understood by the general public; be in parents' native language; explain the type of assessment to be conducted

and inform parents of anyone to whom information about the student will be released. The plan must also inform the parent that no IEP will be changed based on the assessment without a parent's consent. (Ed. Code § 56321, subd. (b); 34 C.F.R. 300.9 (a) and (b).) In addition, the proposed assessment plan must include a description of any recent assessments conducted, including available independent assessments. It must include any assessment information the parent requests to be considered. (Cal. Code Regs., tit. 5, § 3022.)

Western Placer provided Parents an assessment plan on October 21, 2019. The assessment plan properly described the assessments to be conducted and identified the professionals responsible for conducting the assessments in easily understood language in English, which is Parents' native language. The assessment plan was legally compliant. The evidence established that Parent had adequate time to consider the plan and signed the assessment plan on February 7, 2020. The evidence also established that Parents received all required notices and a copy of their rights and procedural safeguards as required by state and federal law.

The assessment plan stated that the assessors would review "all previous assessments/records" of Student. Western Placer received October 2018, May 2019 and October 2019 developmental evaluations from the Placer County Office of Education, a vendor of Alta California Regional Center that provided Student with early childhood services. Western Placer also obtained a December 10, 2019 psychological evaluation completed by Cassie Majestic, Psy.D.. Alta had referred Student to Dr. Majestic for a psychological evaluation to be assessed for intellectual and adaptive functioning and for autism. Dr. Majestic ultimately diagnosed Student with Autism Spectrum Disorder with accompanying deficits in language, without accompanying deficits in intellect.

Student asserts that Western Placer should have obtained records from Alta as well, namely, an individual program plan dated January 15, 2020. Given that Placer County was a vendor of Alta, and that Western Placer was able to obtain Student's records from Placer County, Student's expectation that Western Placer also obtain records from Alta is reasonable. The information contained in the individual program plan is largely duplicative of the information that Parents provided to Western Placer during the assessment process. As such, the omission of the individual program plan would not have changed the outcome of Western Placer's assessment of Student and was not prejudicial.

Student also asserts that, as part of its record review, Western Placer should have obtained a July 19, 2019 initial neurology consult note from Leon Grant, DO. The evidence did not establish that Parents executed any medical waivers for Western Placer to do so. As a health care professional herself, Mother was familiar with medical record confidentiality protocols. Student's expectation that Western Placer should have received Student's medical records with no medical waiver is not reasonable.

Western Placer conducted in initial multidisciplinary assessment of Student on February 7, 2020 and held an IEP team meeting to discuss the results of the assessment on March 6, 2020. The IEP team meeting met the required 60-day deadline for assessment completion IEP team discussion. (Ed. Code § 56344, subd. (a).)

ASSESSMENTS CONDUCTED

Western Placer conducted a multidisciplinary assessment of Student on February 7, 2020 in the areas of health, speech-language, occupational therapy, and psychoeducation. The psychoeducation assessment evaluated areas of intellectual development, pre-academic achievement, adaptive and social-emotional skills. At the

time of the assessments, Student was 36 months old. The assessments were conducted in Western Placer's Early Childhood Assessment Team assessment room during the same session. Mother was present with Student for the entirety of the assessment.

Western Placer compiled the health, speech-language, occupational therapy and psychoeducation reports into one multidisciplinary report for Student's initial assessment. The parties were generally in agreement regarding the health and speech and language assessments. Student did not raise any specific challenge to either. The evidence established that both of those assessments were conducted by qualified assessors using assessment instruments that met all legal requirements. The methods of assessment also met legal standards.

OCCUPATIONAL THERAPY ASSESSMENT

Western Placer assessed Student's fine and gross motor development. The occupational therapy assessment also assessed movement, body position, tactile, visual and auditory sensory systems. Western Placer determined that assessment of sensory processing issues was warranted due to Student's recent autism diagnosis.

Gina Domenici-Robinson assessed Student's occupational therapy needs. The evidence established Robinson met the statutory requirements to conduct the assessment. Robinson earned a bachelor's degree in occupational therapy in 1996. Robinson was licensed in California as an occupational therapist and was nationally board certified in occupational therapy. Robinson was knowledgeable of the student's disability and competent to perform the assessment. (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) Robinson had been employed as an occupational therapist with Western Placer since 2009. Robinson served as an occupational therapy fieldwork supervisor for Western Placer, and was a member of

Western Placer's Early Childhood Assessment Team, which assessed children between the ages of two and five years old. At the time of assessment, Robinson had completed over 800 occupational therapy assessments for Western Placer. More than 400 of those students transitioned from early intervention to public school special education programs. Robinson was qualified to conduct this assessment.

Robinson tested Student's fine and gross motor skills by conducting the Developmental Programming for Infants and Young Children, Volume 2 and the Brigance Inventory of Early Development III Standardized. Robinson used Mother's reporting for the gross motor skills portion of the assessment tool. Robinson also observed Student perform several gross and fine motor tasks during assessment. Robinson found Student's gross and fine motor skills to be in the average range for his age, and did not recommend occupational therapy services. The evidence established that Robinson's findings regarding Student's gross and fine motor skills were accurate.

Parents had reported concerns with Student's strong sensory preferences, hand flapping and sensitivity to noise on Western Placer's Health and Developmental History intake sheet. Robinson had Mother complete the Sensory Processing Measure, Preschool rating form, which rated Student's balance and motion, body awareness, tactile, visual, auditory, social participation and motor planning sensory systems. Possible results on this rating scale included "typical", "some problems", and "definite dysfunction". Mother rated Student as "typical" in the area of balance and motion. Student disagrees with the "typical" rating in the area of balance and motion, but did not explain the basis for the disagreement, considering the score was based on Mother's responses. Mother rated Student in the range of "definite dysfunction" for all other categories. Mother's ratings were based on her observations in the home environment. During the assessment session, Robinson observed Student to shake his head back and

forth, hit his hands on the table, and fidget. Robinson considered Student's hitting his hands on the table a slight over-reaction, but did not observe anything that would impact Student's ability to access his education. Robinson did not recommend any occupational therapy services for Student.

Student disagrees with Robinson's report, alleging it failed to thoroughly assess Student's sensory processing. The evidence established that during the assessment session, the air conditioning unit in the assessment room began working, and Student covered his ears in response to the loud noise. Robinson did not include an observation of this incident in her report. Student argued that this is a significant omission, since one of Student's reported autistic behaviors was a sensitivity to noise. The evidence established that the assessment room's air conditioner was loud. Student did not present any evidence on the meaning or significance of Student's covering of his ears, or that such behavior was an atypical response for a three-year-old. Student did not introduce evidence of any other tool Robinson should have used in assessing Student's sensory processing. Robinson's occupational therapy assessment was thorough.

Student also contests the accuracy of Robinson's testimony that a portion of the occupational assessment occurred in the hallway outside of the assessment room. Mother testified that the entirety of Student's assessment occurred within the assessment room. If Robinson's testimony regarding the hallway was a misstatement, the misstatement was immaterial.

Robinson was knowledgeable of Student's disability. In performing her assessment of Student, Robinson did not rely on a single measure or evaluation as the sole criteria for making a disability determination. Rather, she relied on a variety of tools and strategies to gather relevant information. Robinson also observed Student during the testing session and reviewed recent early intervention assessments, including

the December 10, 2019 psychological evaluation report by Cassie Majestic, Psy.D.. Robinson assessed Student in English, his primary language. Robinson established that the instruments she used were technically sound, valid, and reliable, and were not racially, culturally, or sexually discriminatory, and that she was competent to use them. Robinson's occupational therapy assessment of Student met the legal standards and was appropriate.

PSYCHOEDUCATION ASSESSMENT

School psychologist Mayela Cerda-Martinez performed the psychoeducation assessment in the areas of intellectual development, pre-academic achievement, adaptive skills and social-emotional skills. At the time of assessment, Student was 36 months old.

The evidence established Martinez met the statutory requirements to conduct the assessment. Martinez earned a master's degree in psychology in 2001 and held school counseling and school psychology credentials since 2000 and 2001, respectively. Martinez was knowledgeable of the student's disability and competent to perform the assessment. (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) Martinez had been employed as a school psychologist with Western Placer since 2001. During most of her time with Western Placer, Martinez facilitated the transition of special needs students from early intervention services to special education services in district schools, serving as the Early Childhood Assessment Team Coordinator since 2008. Among her responsibilities were conducting assessments, selecting and evaluating assessment tools, and coordinating assessment reports. During her career, Martinez completed over 1500 psychoeducation assessments. More than 500 of those assessments were of Students transitioning from early intervention to public school special education programs and more than 400 of her assessments of children

transitioning to preschool involved children suspected of being on the autism spectrum. Martinez was properly credentialed to conduct the assessment

COGNITIVE SKILLS

Martinez administered the Bayley Scales of Infant and Toddler Development, Third Edition to assess Student's cognitive abilities. Martinez chose the Bayley because it was a play-based assessment that would elicit the most accurate representation of a young child's abilities.

The Bayley assessed Student's cognitive ability by examining sensory-motor development, exploration and manipulation, object relatedness, concept formation, and memory. Student achieved a score of 90, with an age equivalent of 30 months. Student demonstrated object exploration and manipulation, relational and representational play, the ability to match and imitate, an understanding of the concept of one, and ability to group objects by an attribute in common. Student was not able to group objects by size or compare masses. Martinez found Student's cognitive skills to be average when compared to other children his age.

Student disagrees with Martinez's finding that Student's cognitive skills were average, as it was inconsistent with cognitive deficits identified in Dr. Majestic's psychological evaluation report. In administering the Wechsler Preschool and Primary Scale of Intelligence Fourth Edition, another cognitive assessment, Dr. Majestic found that Student scored in the fifth percentile for verbal comprehension.

Dr. Majestic did not testify at hearing. While hearsay evidence is admissible in special education hearings, findings of fact in a special education decision may not be based solely on hearsay evidence. (Cal. Code Regs., tit. 5, § 3082 subd. (b).) The

conclusions in Dr. Majestic's report were not corroborated by any other non-hearsay evidence. Martinez's testimony was credible.

PRE-ACADEMIC SKILLS

Martinez used the School Readiness Composite of the Bracken Basic Concept Scale, Third Edition to assess Student's pre-academic skills. The average standard score range was 86-114, and Student scored 92, falling within the average range. Student was able to label most basic colors and shapes, counted from one to four and demonstrated an understanding of the concept one and one more. Student understood the comparison concept of big versus small. Martinez assessed Student's school readiness skills to be average for his age and not an area of concern. Student expressed disagreement with this finding, but did not specifically assert how this assessment did not meet legal standards. Martinez was an experienced assessor whose conclusions were supported by testimony and evidence presented at hearing. The evidence established that the pre-academic portion of the assessment was accurate.

ADAPTIVE SKILLS

Martinez assessed Student's adaptive and self-help skills by observing Student during testing, interviewing Mother and administering two ratings instruments. Martinez had Mother complete the Developmental Profile 3 Parent/Caregiver Checklist, which rated Student's physical, adaptive behavior, social-emotional, cognitive, and communication functioning. Overall, Mother rated Student as average in physical and adaptive behavior functioning, below average in cognitive functioning, and delayed in social-emotional functioning and communication. The average standard score range for general development was 85-115, and Student received a score of 70, or below average. Martinez also administered the Adaptive Behavior Domain of the Brigance through an

interview with Mother to measure Student's self-help skills. Based on Mother's responses, Martinez found Student's adaptive behavior and daily living skills score to be 87, or an age equivalent of 26 months. Martinez concluded that this was only slightly below average, because the average composite range for a three-year-old child was 90-110. Martinez's testimony established that Student's lower than average score was due primarily to his inability to anticipate or communicate his toileting needs. Student expressed disagreement with this finding, but did not specifically assert how this assessment did not meet legal standards. Martinez's testimony was persuasive. The evidence established that the assessment of Student's adaptive skills was legally compliant.

SOCIAL-EMOTIONAL/BEHAVIOR

Martinez administered the Social and Emotional Development Domain of the Brigance Inventory of Early Development, III Standardized, to assess Student's interpersonal skills and self-regulation. Student was able to reach for things he wanted, explored an environment with curiosity, helped put things away, and perform simple errands. Student did not demonstrate an awareness of good versus bad behavior and demonstrated limited safety precautions. Mother described Student as high-strung with varying attention span, with a tendency to tantrum up to 40 minutes long if he did not get what he wanted. Student had difficulty self-regulating and recovering. Martinez determined Student's interpersonal skills were average. Martinez determined Student's self-regulation as below average.

Martinez reviewed information from Mother that described several autistic-type behaviors. Mother reported that Student engaged in repetitive lining up of toys, walked on tiptoe at times, looked at objects out of the corner of his eye, wanted to do things his way only, engaged in parallel play when among his peers, had severe tantrums, was

sensitive to loud noises, was sensitive to various textures of foods, liked small spaces, and flapped his hands whenever happy or upset.

Martinez administered the Childhood Autism Rating Scale, Second Edition, Standard Version, to evaluate autistic-like behaviors. Student's score on this instrument indicated minimal symptoms associated with autism. Student used one to three-word utterances with clear communicative intent. Student was observed to communicate nonverbally as well, demonstrating appropriate direct eye contact, gestures, facial expressions, and appropriate joint attention. Socially, Student demonstrated awareness of others, shared enjoyment with others, and was responsive to smile and praise from others. Student responded to his name and responded to greetings. Martinez concluded that Student was able to functionally communicate with others.

Martinez included in the assessment report her recommendation that Student did not meet eligibility criteria under the special education category of autism. Student challenges the assessment on the basis that this recommendation was inaccurate. However, eligibility determinations are made by the IEP team and not an individual assessor. Student presented no authority establishing that an assessor's recommendation regarding an eligibility category, if adopted or rejected by an IEP team, would render an assessment not legally compliant. As noted, a determination about Student's eligibility is outside of scope of this hearing, and no findings regarding that claim are reached herein.

Student also asserts that the psychoeducation assessment failed to assess Student's deficits in attention and maladaptive behaviors like severe tantrums and propensity to elope. Student also asserts that Western Placer should have conducted a functional behavior analysis of Student. These contentions exceed the scope of the issue to be decided and will not be addressed by this decision.

In conducting her assessment, Martinez did not use a single evaluation to measure each component of the psychoeducation evaluation. For each component, Martinez used a variety of assessment strategies, including assessment tools, parent interviews, parent questionnaires, in-person observation of Student, and records review of existing assessment data. Martinez used technically sound instruments in accordance with the instructions provided by the producer of the assessment that were valid and reliable for the purposes they were used, and she was qualified to administer them. The instruments were not racially, culturally, or sexually discriminatory. Martinez assessed Student in English, his primary language. In selecting which instruments to use, Martinez tailored the tests to assess Student's specific areas of need, considering any sensory, manual, or speaking impairments, and also considered what assessments had already been performed on Student to ensure that Student would not be retested prematurely before the requisite amount of time had passed. Western Placer established that its multidisciplinary assessment was legally compliant.

ASSESSMENT REPORT

The evidence established that Western Placer timely provided Parent with a written assessment report that met all of the requirements of state and federal law. (20 U.S.C. § 1414 (b)(4)(B); Ed. Code, § 56329, subd. (a)(3).) Student alleges that the assessment report contains a misstatement of fact, causing the validity of the report to be suspect. Under the "Early Intervention Services" subheading of the "Background Information" portion of the report, Western Placer states that Student received feeding therapy from Placer County which was ultimately discontinued. Mother testified that Student never received in-home feeding therapy. If this was a misstatement of fact, the misstatement is immaterial for the purposes of this case. Western Placer's assessment was legally compliant.

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. In this case, Western Placer's February 28, 2020 multidisciplinary assessment was appropriate, and Student is not entitled to an IEE at public expense. Western Placer Unified School District prevailed on the sole issue determined in this case.

ORDER

1. Western Placer's February 28, 2020 multidisciplinary assessment was legally compliant.
2. Student is not entitled to a multidisciplinary independent educational evaluation in the areas of health, occupational therapy, speech and language, and psychoeducation.

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/

Claire Yazigi

Administrative Law Judge

Office of Administrative Hearings