

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020030396

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

OCTOBER 15, 2020

On March 10, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Los Angeles Unified School District, naming Parents on behalf of Student as respondents. On March 23, 2020, OAH issued a General Order Continuing All Non-Expedited Special Education Pre-Hearing Conferences and Hearings due to the Covid-19 pandemic and public health emergency. On April 6, 2020, OAH issued a new scheduling order setting dates in this matter. At Prehearing Conferences on April 20, 2020, and June 1, 2020, OAH granted continuances to allow Student's mother, referred to as Parent, to participate in and prepare for a due process hearing.

Administrative Law Judge Cararea Lucier heard this matter by videoconference on September 1 and 2, 2020.

Patrick Balucan represented Los Angeles Unified School District. Eric Young, Due Process Specialist, attended all hearing days on Los Angeles' behalf. Parent represented Student and attended all hearing days on Student's behalf.

At the parties' request the matter was continued to September 21, 2020, for written closing briefs. The record was closed, and the matter was submitted on September 21, 2020.

ISSUE

1. Are Los Angeles Unified School District's January 24, 2020 Psychoeducational Assessment, and January 23, 2020 Supplemental Psychoeducational Assessment, appropriate such that Student is not entitled to an independent educational evaluation 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, 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).) Los Angeles had the burden of proof in this matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was a nine-year old girl who resided within Los Angeles Unified School District with Parent at all times relevant to this matter. She qualified for special education and related services under the eligibility category of Other Health Impairment.

ISSUE 1: ARE LOS ANGELES UNIFIED SCHOOL DISTRICT'S JANUARY 24, 2020 PSYCHOEDUCATIONAL ASSESSMENT, AND JANUARY 23, 2020 SUPPLEMENTAL PSYCHOEDUCATIONAL ASSESSMENT, APPROPRIATE SUCH THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

Los Angeles contends that its psychoeducational reassessments of Student complied with the requirements of the IDEA and the California Education Code. As such, Los Angeles contends that Student is not entitled to an independent educational evaluation, referred to as an IEE, at public expense.

Student contends that although Los Angeles' evaluations are generally good, Parent would like an IEE at public expense. Parent asserts that Los Angeles made some factual errors in the psychoeducational assessment reports. Parent also disagrees with the conclusion in the assessments that Student is not eligible for special education and related services under the category of Autism.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide

educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

School district evaluations of students with disabilities under the IDEA serve two purposes. First, identifying students who need specialized instruction and related services because of an IDEA-eligible disability. And second, helping IEP teams identify the special education and related services an eligible student requires. (34 C.F.R. §§ 300.301 (2007), 300.303 (2006).) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to follow-up or repeat evaluations. (See Comments, 71 Fed. Reg. 46,640 (Aug. 14, 2006).) California law refers to evaluations as assessments. (Ed. Code, § 56302.5.)

A reassessment of a child with a disability must generally be conducted in accordance with the requirements for an initial evaluation. (34 C.F.R. § 300.303.)

In conducting a reassessment, a school district must follow statutory guidelines regarding the content of the assessment and the qualifications of the assessors. Reassessments must be conducted by persons who are trained and knowledgeable in the pupil's disability, and who are competent to perform them as determined by the local educational agency. (20 U.S.C. §§1414(b)(3)(A)(iv); 34 C.F.R. 300.304(c)(1)(iv)(2006); Ed. Code, §§ 56320, subd. (g), 56322.) The assessor must be competent in the student's primary language or mode of communication, and have knowledge and understanding of the cultural and ethnic background of the student. (Cal. Code Regs., tit. 5, § 3023, subd. (a).) A psychological assessment shall be conducted by a credentialed school

psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code §§ 56322, 56324, subd. (a).)

A district must ensure that a reassessment is sufficiently comprehensive to identify all the student's needs for special education and related services, whether or not commonly linked to the identified disability category. (20 U.S.C. §1414(b)(3); 34 C.F.R. § 300.304(b)(1)(ii) &(c)(6)(2006); Ed. Code, § 56320, subd. (c).) In conducting an assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1)(2006).) In performing a reassessment, an educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2)(2006).) In performing a reassessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305(2006); Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

The assessment materials must be valid and reliable for the purposes for which the assessments are used, and must be administered in accordance with any instructions

provided by the producer of such assessments. (20 U.S.C. § 1414(b)(3)(A)(iii) and (v); Ed. Code, § 56320, subd. (b)(2).) The district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) An assessment must be provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally. (20 U.S.C. § 1414(b)(3)(ii); Ed. Code § 56320, subd. (b).)

Persons who conduct assessments shall prepare a written report, as appropriate, of the results of each assessment. The report shall include, but not be limited to:

1. whether the student may need special education and related services;
2. the basis for making that determination;
3. the relevant behavior noted during observation of the student in an appropriate setting;
4. the relationship of that behavior to the student's academic and social functioning;
5. the educationally relevant health, development, and medical findings, if any;
6. if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
7. consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment.

(Ed. Code, § 56327.)

The assessment report must be provided to the parent. (Ed. Code, § 56329, subd. (a)(3).)

A parent has the right to obtain an independent educational evaluation if the parent disagrees with a district's assessment. (34 C.F.R. § 300.502 (2006); Ed. Code, § 56329, subd. (b).) If a parent requests an independent educational evaluation at public expense, the education agency must, without unnecessary delay, file a due process hearing request to demonstrate that its assessment is appropriate, or ensure that an independent educational evaluation is provided at public expense. (34 C.F.R., § 300.502(b)(2); see also Ed. Code, § 56329, subds. (b) &(c).)

If the final decision resulting from the due process hearing is that the assessment is appropriate, the parent still has the right to obtain an independent educational evaluation, but not at public expense. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

Parent requested an IEE at public expense soon after Student began attending third grade at Woodlawn Avenue Elementary School in August of 2019. Parent had many concerns, which she communicated to school staff. Parent complained to school staff that Student's special education teacher did not allow Student to use the restroom, and that Student suffered urinary problems and accidents as a result. She worried that Student was not safe at school and alleged that Student was bullied, fell off the stairs, got lost at school, and that the school did not call Parent when Student had a nosebleed. Parent reported that Student displayed autistic-like behaviors at home, and that Student was not making academic progress at school. Overall, Parent felt that school staff did not listen to her during IEP team meetings.

Parent had successfully obtained an IEE for Student in the past. Student was assessed for special education during her kindergarten year but found ineligible at an IEP team meeting on March 15, 2017. Parent requested and Los Angeles funded an IEE at public expense. Following an IEE report dated December 3, 2018, Los Angeles found Student eligible for special education and related services under the category of Other Health Impairment.

In response to Parent's fall 2019 request, school staff asked Parent for the opportunity to assess Student first. Los Angeles suggested conducting an early triennial assessment of Student and provided Parent with an assessment plan. At first, Parent refused. She had already selected a non-district psychologist to assess Student, who had agreed to conduct an IEE if funded by Los Angeles. However, Parent eventually consented, and returned the signed assessment plan to school staff in November of 2019. There is no dispute that Parent understood the assessments proposed and provided informed consent.

Arianna Lopez, School Psychologist, was charged with conducting Student's psychoeducational reassessment. Lopez had a bachelor's degree from California State University, Los Angeles, which she earned with the Magna Cum Laude distinction, as well as a master's degree in School Counseling. Lopez held a multiple-subject teaching credential and a Pupil Personnel Services credential with a specialization in School Psychology and Child Welfare and Attendance, which qualified her as a school psychologist. Lopez was trained and qualified to conduct psychoeducational assessments through classes in collecting psycho-metric data and internships under supervision, as well as continuing training from Los Angeles Unified School District. She had five-years' experience as a school psychologist and was fluent in both English and Spanish. Lopez presented as a competent and knowledgeable assessor who took great

care to ensure that Student was comprehensively assessed. As such, Lopez was a highly credible witness and her testimony was given substantial weight.

Lopez used a variety of assessment tools to conduct Student's psychoeducational assessment, including standardized tests, rating scales, observations of Student in structured and unstructured times, interviews with Student, her teacher, and Parent, and a review of records. Lopez did not rely on a single measure or evaluation in determining whether Student had a disability or educational needs, but rather used an array of methods to assess Student in the areas of cognitive functioning, academic performance, language function, motor abilities, and social emotional status.

Lopez reviewed the existing assessment data, including information provided by Parents, observations by teachers and service providers, and Student's educational records. Lopez carefully reviewed a previous IEE report conducted by Carlos A. Flores, Clinical Neuropsychologist, dated February 18, 2018, March 19, 2018, and May 14, 2018, and summarized portions of the IEE in her assessment report. Lopez reviewed the initial psychoeducational assessment of Student dated March 1, 2017, and an updated health screening by a district school nurse dated December 6, 2019. She reviewed Student's IEPs of March 15, 2017, October 3, 2018, March 27, 2019, and September 25, 2019. She also reviewed Student's attendance and grade reports from the beginning of the 2017-2018 school year through the date of her assessment.

Lopez interviewed Parent and Student's teacher. She listened to Parent's concerns about Student, included them in her report, and sought to assess these areas of concern throughout her assessment. Lopez observed Student at school on six occasions, in both structured and unstructured settings. Lopez noted that Student fell once during her observations. This was an area of concern for Parent. However, Lopez

noted that this incident occurred during a game of kickball when many other students also fell while playing. Student picked herself back up and continued playing. In response to Parent's concerns with peer relations, Lopez noted that Student had good peer interactions during her observations. Student played imaginary games with her peers and had reciprocal conversations during unstructured time at lunch. In the classroom, Lopez observed that Student was fidgety and distracted during math. Lopez collaborated with her colleagues to further assess Student in the areas of academic progress and autistic-like behaviors.

Lopez administered various standardized tests to Student. The assessment materials were valid and reliable for the purposes for which the assessments were used. Lopez selected and administered assessment materials in Student's primary language of English, which were free of racial, cultural, and sexual discrimination. She first administered a standardized test of the cognitive functioning of children and adolescents, with an emphasis on planning, attention, and simultaneous and successive cognitive processing. Results of this tests showed that Student had average cognitive abilities, with a relative strength in visual processing and a relative weakness in attention and phonological processing.

Next, Lopez administered a test to assess Student's visual processing. The results showed that visual processing was a strength for Student and that she benefited from visuals to learn. Lopez selected and administered a test to assess Student's phonological processing. It showed that although Student demonstrated the ability to process sounds, Student had some weaknesses in this area which might impact her reading.

Lopez administered a test to measure Student's sensory motor abilities. The results demonstrated that Student had average sensory motor and fine motor skills. Lopez selected a standardized measure to assess Student's critical thinking. Student performed in the low average range in reasoning and critical thinking skills.

Lopez selected and administered several rating scales to assess Student's social, emotional, and behavioral needs. Questionnaires were given to Parent and Student's teacher. The results indicated Student had challenges with attention that affected her social emotional status. Both Parent and Student's teacher were consistent in rating Student as having very elevated levels of behaviors identified with Attention Deficit Hyperactivity Disorder.

Student's teacher rated Student as having clinically significant behaviors in the areas of learning problems, school problems, leadership, and study skills. Parent rated Student as having clinically significant behaviors in the area of activities of daily living. Both rated Student as having clinically significant behaviors in the areas of withdrawal, social skills, functional communication, and adaptive skills.

Lopez used a rating scale to look at whether Student displayed characteristics associated with Autism Spectrum Disorders. Student's teacher rated her as having many behavioral characteristics similar to individuals diagnosed with Autism Spectrum Disorders, including very elevated levels of behavior in the areas of peer socialization, social/emotional reciprocity, attention, and social communication. Parent also rated Student as having elevated levels of behavior in many areas indicative of an Autism Spectrum Disorder. Lopez found these results inconsistent with the reports of Student's previous teacher and her own observations. As such, Lopez referred Student for further

assessment in the area of Autism by a colleague with significant experience in conducting such assessments, Molly Onstine.

Lopez assessed Student in English, the language she determined to yield accurate information on what Student knew and could do academically, developmentally, and functionally. The evidence at hearing supported the decision by Lopez and other Los Angeles assessors to assess Student in English. Student was designated Limited English Proficient and attended a Structured English Immersion program. Student scored at level 3 on a test of English language development, which indicated moderately developed English language skills. Parent reported that Student communicated in both languages and did not appear to have a preference. Parent had no objection to assessment in English. Student reported that she could communicate in both languages equally. During an assessment with open-ended questions, Student easily communicated in complex English sentences. Language samples collected during testing included: "I remember a channel where the person paints something and then it comes to life," "I'm talkative. The classmate next to me, I always bother him talking and he says, 'Do your work'," "I notice my mom always struggles with me and my sister," and "If you get married, you never know if the person you love will leave you." As Student communicated in both languages equally, Los Angeles appropriately chose to assess Student in English, and obtained valid and reliable results.

Molly Onstine, School Psychologist, conducted a supplemental assessment of Student in the area of Autism. Onstine had a bachelor's degree, Summa Cum Laude, and an Educational Specialist degree. Onstine held a Pupil Personnel Services credential in School Psychology, which qualified her as a school psychologist. She had 15-years' experience as a school psychologist. Onstine received specialized training to conduct the assessment instrument she administered, through 12 hours of clinical workshops

and training from the publisher. Onstine had given approximately 60 assessments with that instrument over her career and was experienced and qualified in giving this assessment. Onstine presented as a highly credible witness with a precise and sophisticated understanding of her assessment tools and a clear recollection of her testing of Student.

Onstine administered the test in a one-to-one setting with Student, according to the publisher's instructions. The test was a valid and reliable assessment for Student in order to determine if Student displayed behaviors consistent with a diagnosis of an Autism Spectrum Disorder. Student scored a two in the area of Communication and Reciprocal Social Interaction, and a zero in the area of Restricted and Repetitive Behavior, for a total score of two. The cutoff for an Autism Spectrum Disorder was a combined score of seven. Overall, Student's score fell into the non-spectrum range, with minimal to no evidence of an Autism Spectrum Disorder.

Following her assessment of Student, on January 23, 2020, Onstine generated a written assessment report entitled Psychoeducational Supplemental Assessment. Onstine's assessment report included a thorough explanation of her assessment of Student, including behavioral observations, language samples, standardized testing results, and recommendations. Onstine reported her findings to Lopez, who incorporated them into a comprehensive Psychoeducational Assessment Report dated January 24, 2020.

Vilma Villatoro, Resource Specialist Teacher, assessed Student's academic skills. Villatoro had a bachelor's degree from California State University, Los Angeles and an Education Specialist, Mild/Moderate, teaching credential. Villatoro had 21-years' experience in education, including five years as a special education teacher. She was

trained and qualified to conduct an academic assessment of Student. Villatoro used an array of assessment tools, including a standardized test, Parent and teacher interviews, observations of Student, and a review of records.

Villatoro chose a standardized test to assess Student's academic achievement. Student scored in the low and low average range in reading, with a low score in letter-word-identification and a low average score in passage comprehension. Her Broad Reading score fell in the low range. Student scored slightly higher in the area of writing, with the range of scores from low in Spelling to an average score in writing samples. In Broad Written Language, Student scored in the low average range. Student performed from the low range to the average range in math, with a relative weakness in math facts fluency, and a relative strength in calculation. Student scored in the low average range in Broad Mathematics. Villatoro concluded that, overall, Student was working below grade level in the areas of reading, writing, and math. This finding was consistent with Parent's concerns and input from Student's teacher that Student was working below grade level in all academic areas.

On January 21, 2020, Villatoro generated a written report entitled Academic Assessment Report. She included a summary of Student's educational history, a detailed description of Parent's concerns, teacher input, behavioral observations, standardized testing results, and recommendations. Villatoro discussed the academic assessment results with Lopez, who incorporated the results into the Psychoeducational Assessment report of January 24, 2020.

Lopez compiled her assessment information with the reports of Onstine and Villatoro, and generated a written assessment report entitled Psychoeducational Assessment, dated January 24, 2020. Lopez's comprehensive, 27-page assessment

report included the results of interviews with Student, Parent, and Student's teacher, and a detailed summary of Student's educational records and history. It reported the results of the rating scales and standardized tests, and Lopez's behavioral observations. Lopez explained the results of the testing in both a narrative format as well as an appendix of scores at the end of the report. Lopez included educationally relevant health and development, and medical findings. She provided a thoughtful explanation of the relationship between Student's behaviors and Student's academic and social functioning. The report included an analysis of whether Student continued to be eligible for special education and related services, finding that Student met the criteria under the category Other Health Impairment but not under the categories of Specific Learning Disability or Autism. Although Student had a history of excessive absences, Lopez found that overall the results of the assessment were not primarily due to effects of environmental, cultural, or economic disadvantage, or unfamiliarity with the English language.

Los Angeles held a two-part IEP team meeting on January 24, 2020, and February 7, 2020, to review Student's assessments. Parent attended both meetings. Carol Katayama, Assistant Principal Elementary Instructional Specialist, served as the administrator for both meetings. Lopez and Villatoro attended both meetings and presented the assessment reports. Los Angeles provided Parent with a written copy of the assessment reports. At the conclusion of the February 7, 2020 IEP team meeting, Parent signed her consent to the IEP with the exception of the Psychoeducational Assessment. In written comments on the IEP and in a discussion following the meeting with Ms. Katayama, Parent clarified that she was requesting a psychoeducational IEE.

At the hearing, Parent agreed that Los Angeles' assessments were good, although she did point to a few minor areas where she felt the assessment report was inaccurate

or the assessors had made technical mistakes regarding Student's health and family history. She did not request the IEE because she disagreed with a specific assessment, but because she was concerned with Student's academic performance and behavior and believed that the IEP team was not listening to her.

The assessment tools and methods chosen by Lopez, Onstine and Villatoro were designed to, and did, provide the January and February 2020 IEP teams with accurate information about what Student knew and could do academically, developmentally, and functionally. The psychoeducational assessment, including the supplemental assessment to inquire further into whether Student had an Autism Spectrum Disorder and the academic achievement test, were sufficiently comprehensive to identify all Student's needs for special education and related services. Los Angeles timely filed a due process hearing request on March 10, 2020, to defend its assessment after Parent's February 7, 2020 IEE request.

The overwhelming evidence in the hearing showed that Los Angeles appropriately and comprehensively assessed Student in the area of psychoeducational functioning. Although Parent did not agree with Los Angeles' conclusion that Student was not eligible under the category of Autism, Los Angeles diligently assessed Student in all areas identified by Parent as possible educational concerns. When the evaluation produced some conflicting data, Lopez arranged for additional, more intensive testing to get clarity as to Student's needs. Los Angeles proved that its assessments were legally appropriate. As such, Student is not entitled to an IEE at public expense.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Issue 1: Los Angeles Unified School District's January 24, 2020 Psychoeducational Assessment and January 23, 2020 Supplemental Psychoeducational Assessment are appropriate such that Student is not entitled to an independent educational evaluation at public expense. Los Angeles prevailed on the sole issue in this matter.

ORDER

1. Los Angeles' January 24, 2020 Psychoeducational Assessment and January 23, 2020 Supplemental Psychoeducational Assessment are appropriate.
2. Los Angeles is not required to provide Student with an IEE at public expense in the area of 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/

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings