

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023070223

CASE NO. 2023060384

THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT, AND

SAN DIEGO UNIFIED SCHOOL DISTRICT.

DECISION

NOVEMBER 1, 2023

On June 9, 2023, San Diego Unified School District filed with the Office of Administrative Hearings, called OAH, a due process hearing request, called a complaint, in OAH case number 2023060384, San Diego Unified's Case, naming Student. On June 15, 2023, OAH continued the matter for good cause. On July 6, 2023, Student filed a complaint naming San Diego Unified in OAH case number 2023070223, Student's Case. On July 26, 2023, OAH consolidated the cases and designated Student's Case as the primary case. On August 25, 2023, Student dismissed his case. Accordingly, only San Diego Unified's issue will be addressed in this Decision.

Administrative Law Judge Linda Dowd heard this matter by videoconference on September 6, 2023. The Administrative Law Judge is called an ALJ.

Attorney Karin Anderson represented San Diego Unified. Due Process Director Brian Spry attended the entire hearing on San Diego Unified's behalf.

No one appeared on Student's behalf. The ALJ called Parents while on the record and confirmed Parents received the invitation to the due process hearing. Parents confirmed they received the invitation, but Parents decided not to appear or participate in the due process hearing. The ALJ informed Parents OAH would continue to send them notice of the due process hearing and encouraged Parents to participate.

At San Diego Unified's request, the matter was continued to September 27, 2023, for written closing arguments. On September 7, 2023, the ALJ issued an order notifying Student of the due date for closing briefs. The record was closed, and the matter was submitted on September 27, 2023.

ISSUE

Was San Diego Unified's January 6, 2023, psychoeducational assessment, as amended on January 24, 2023, including academic and corresponding assessment reports, legally compliant such that Student is not entitled to an independent educational evaluation at public expense?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as the IDEA, 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 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, San Diego Unified filed the complaint and has the burden of proof on the issues. 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 10 years old and in fifth grade at the time of hearing. Student was eligible for special education under the category specific learning disability. Student moved into San Diego Unified's geographic boundaries in January 2022, but had not attended a San Diego Unified school. Parents placed Student at NewBridge School, a nonpublic school located outside of San Diego Unified, during summer 2022.

ISSUE: WAS SAN DIEGO UNIFIED'S JANUARY 6, 2023, PSYCHOEDUCATIONAL ASSESSMENT, AS AMENDED ON JANUARY 24, 2023, INCLUDING ACADEMIC AND CORRESPONDING ASSESSMENT REPORTS, LEGALLY COMPLIANT SUCH THAT STUDENT IS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

San Diego Unified contends it is not obligated to fund the speech and language, mathematics, and cognitive and intellectual ability independent educational evaluations Parents requested because its own assessment of Student complied with all applicable laws. San Diego Unified asserts it prepared an appropriate assessment plan to assess Student in all areas of suspected disability, and used qualified assessors to conduct an appropriate, timely assessment of Student that met all statutory requirements.

Student did not appear for the due process hearing or submit a closing brief. However, Student's dismissed complaint alleged concerns with San Diego Unified's January 6, 2023, psychoeducational assessment. Student contended San Diego Unified's assessments and accompanying report were not legally compliant because they did not address the inconsistencies between San Diego Unified's assessment report and Dr. Christina Watson's June 21, 2022, private psychoeducational assessment that concluded Student's cognitive abilities were within the third percentile. Student

contended because of the discrepancy, San Diego Unified should fund independent educational evaluations in speech and language, mathematics, and cognitive and intellectual abilities.

REQUEST FOR AN INDEPENDENT EDUCATIONAL EVALUATION

Under certain conditions, a student is entitled to an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) Independent educational evaluation means an evaluation conducted by a qualified examiner not employed by the public agency responsible for educating the child in question. (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the parent must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

The IDEA uses the term evaluation, while the California Education Code uses the term assessment. The two terms have the same meaning and are used interchangeably in this Decision. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

When a parent requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for a due process hearing to show 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); Ed. Code, § 56329, subd. (c).) If the school district proves in a due process hearing that the school district's assessment is appropriate, the school district is not required to fund an independent educational evaluation. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

San Diego Unified held an individualized education program, referred to as IEP, team meeting on January 10, 2023, to review the January 6, 2023, psychoeducational report. Parents attended the IEP team meeting and did not request an independent educational evaluation or any further assessments. Parents emailed a request for independent educational evaluations in the areas of speech and language, mathematics, and cognitive skills on May 1, 2023. San Diego Unified responded to Parents' request on May 11, 2023, with a prior written notice letter denying their request for independent educational evaluations in the areas of speech and language, mathematics, and cognition.

On June 8, 2023, San Diego Unified sent Parents a second prior written notice letter explaining in more detail why it denied Parents' request for independent educational evaluations. San Diego Unified informed Parents it would file a request for a due process hearing if Parents did not withdraw their request for independent educational evaluations. San Diego Unified also sent Parents an assessment plan to conduct a speech and language assessment. Parents did not respond to San Diego Unified's prior written notice and San Diego Unified filed the due process hearing request on June 9, 2023.

The term "unnecessary delay" as used in title 34 Code of Federal Regulations section 300.502(b)(2), is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (*Letter to Anonymous*, U.S. Department of Education, Office of Special Education Programs (OSEP) August 13, 2010).) Some delay in the provision of an independent evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations, or other attempts to resolve the matter. (*J.P. v.*

Ripon Unified Sch. Dist. (E.D.Cal. April 15, 2009) 2009 WL 1034993.) The determination of "unnecessary delay" is a fact-specific inquiry. (*See Pajaro Valley Unified Sch. Dist. v. J.S.* (N.D.Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289 (a delay of almost three months between parent's request for an independent evaluation and district's due process filing was unreasonable where district offered no explanation or justification for its delay). Here, there were 40 calendar days between Parents' request for independent educational evaluations and when San Diego Unified filed its complaint. San Diego Unified sent two prior written notice letters to Parents during that time. San Diego Unified also tried to schedule an IEP team meeting in May 2023 to discuss Parents' concerns. Parents responded to San Diego Unified's June 8, 2023, prior written notice, after San Diego Unified filed the complaint, stating they would withdraw their request for independent educational evaluations if San Diego Unified funded Student's placement at NewBridge. Given San Diego Unified's attempts to resolve the matter before filing the complaint, the 40 calendar days was not an unnecessary delay.

INDEPENDENT SPEECH AND LANGUAGE EVALUATION REQUEST

San Diego Unified did not propose to conduct a speech and language evaluation nor did it conduct a speech and language evaluation as part of the January 6, 2023, psychoeducational assessment. Furthermore, Parents did not request a speech and language evaluation as part of San Diego Unified's January 6, 2023, psychoeducational assessment. Therefore, there was not a speech and language assessment for parent to disagree with. (34 C.F.R. § 300.502(b)(1), (b)(2).) Consequently, Student is not entitled to an independent speech and language evaluation.

THE JANUARY 6, 2023, PSYCHOEDUCATIONAL ASSESSMENT MET ALL LEGAL REQUIREMENTS

A local education agency assessment is appropriate if it 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).)

ASSESSMENT PLAN AND PARENTAL CONSENT

A student receiving special education services must be reassessed at least once every three years or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).) If a school district decides to assess a student, it must give the parent a written assessment plan within 15 calendar days of referral, not counting calendar days between the student's regular school sessions or terms or calendar days of school vacation in excess of five school days, from the date of receipt of the referral, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a).)

The assessment plan must be written in the parent's native language and in terms easily understood by the general public. (Ed. Code, § 56321, subd. (b)(i), (ii).) The assessment plan must explain the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b)(iii).) The assessment plan must also state that no IEP will result from

the assessment without the consent of the parent. (Ed. Code, § 53621, subd. (b)(iv).) A parent has at least 15 days to consent in writing to a proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c)(4).)

San Diego Unified proposed to assess Student because he was new to the district and had never attended a San Diego Unified school. Parents emailed San Diego Unified educational specialist Karin Scheumann on September 12, 2022, notifying San Diego Unified that Student resided within its boundaries, attended a private school, and had an IEP that needed to be updated. Scheumann consulted with San Diego Unified school psychologist Dr. Jonathan Hager and together they decided to propose an early three-year review assessment for Student. Dr. Hager and Scheumann reviewed Student's records and developed an assessment plan.

The October 20, 2022, assessment plan proposed that a school psychologist would assess Student's intellectual development and processing and social-emotional behavior functioning. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) A special education teacher would assess Student's academic achievement. A school nurse would gather Student's health information. The assessment plan explained the assessment would include a review of school records, observations, and interviews. The assessors would also use standardized tests, interviews, record review, observations, and alternate assessments when necessary. The plan was in Parents' primary language of English, described the proposed assessments, and explained the assessments would be reviewed at an IEP team meeting before a program was proposed and, with Parents' consent, implemented. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

San Diego Unified established the October 20, 2022, assessment plan met the procedural requirements under IDEA and the California Education Code. San Diego Unified also established Parents consented to the assessment plan on October 26, 2022. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3), (c)(1); Ed. Code, § 56321, subd. (a).)

TIMELINESS OF ASSESSMENT

School districts must complete special education assessments and hold an IEP team meeting to discuss the results of the assessment within 60 days of the date the school district receives the signed assessment plan unless the parent agrees in writing to an extension. (20 U.S.C. § 1414(a)(1)(c); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed. Code, §§ 56043, subds. (c) and (f)(1); 56321.1, subd. (a), and 56344, subd. (a).) This timeline does not include the days between the student's regular school sessions, terms, or days of school vacation in excess of five school days. (Ed. Code, § 56043, subd. (f)(1).)

Here, San Diego Unified received the signed assessment plan on October 26, 2022. San Diego Unified completed the multidisciplinary assessment and held the initial IEP team meeting to discuss the assessment results on January 10, 2023. There were 75 calendar days from receipt of the signed assessment plan until the IEP was held. However, there were also two holiday breaks of five days or more which totaled 16 school days. Therefore, San Diego Unified held the IEP team meeting to review the psychoeducational assessment 59 days after Parents consented to the assessment plan. San Diego Unified established it completed the psychoeducational assessment and held the IEP team meeting within the statutorily required 60-day timeline.

ASSESSORS AND ASSESSMENT PROCEDURES

In conducting an assessment, a school district must follow statutory guidelines for the qualifications of the assessors and the procedures for the assessment. Individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area, must conduct assessments of students' suspected disabilities. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).) A psychological assessment must be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).)

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 evaluation must be sufficiently comprehensive to identify all the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).) 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).) The school 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).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).)

They must be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent personnel must administer the assessments in accordance with any instructions provided by the producers of such assessments. (20 U.S.C. § 1414(b)(A); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320, subd. (b)(3).)

PSYCHOEDUCATIONAL ASSESSMENT

Dr. Hager conducted the intellectual development and processing, social emotional, and behavioral portions of the psychoeducational assessment. Dr. Hager was a licensed psychologist with a bachelor's degree in psychology, a master's degree in educational psychology, a doctorate in clinical psychology, and a pupil personnel services credential. Dr. Hager had 15 years of experience as a school psychologist and conducted between 900 to 1,000 psychoeducational assessments for San Diego Unified, as well as 15 to 20 independent educational evaluations for students in other districts. Dr. Hager's education, credentials, and experience rendered him highly qualified to conduct psychoeducational assessments, administer standardized tests, interpret the results, and prepare assessment reports.

At hearing, Dr. Hager answered questions candidly and was knowledgeable about assessment procedures and psychoeducational theory and practice. Dr. Hager was forthright about typographical errors and the one calculation error made. None of the errors impacted the assessment results. Dr. Hager's testimony regarding the assessment and his conclusions were well-reasoned and undisputed. Dr. Hager's testimony was credible and given significant weight.

Dr. Hager confirmed the assessment materials and procedures used during the multidisciplinary assessment were selected not to be racially, culturally, or sexually discriminatory. The effects of environmental, cultural, or economic disadvantage were considered in the selection and administration of the instruments used. The materials and procedures were administered in Student's preferred language of English and validated for the specific purpose for which they were used. (20 U.S.C. § 1414(b)(3)(A)(i) and (iii); Ed. Code, § 56320, subds. (a) and (b).) A variety of tools and strategies, including Parent's and Student's input were used to assess Student's strengths, weaknesses, and behavior. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) No single procedure was used as the sole criterion for determining eligibility. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).)

Dr. Hager assessed Student in all areas of suspected disability. Dr. Hager considered whether Student met eligibility criteria under the special education categories specific learning disability and other health impairment. There was no evidence that showed Student had any additional areas of suspected disability. Dr. Hager chose a variety of assessment tools to conduct Student's psychoeducational assessment, including standardized tests, rating scales, and Student observations during assessments. Dr. Hager reviewed Student's educational records, including Dr. Watson's June 2022, private psychoeducational assessment. Dr. Hager obtained Student's background and health information through an educational records review and Parents' input. Parents participated in an interview and completed assessment rating scales.

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OBSERVATIONS AND INTERVIEWS

Dr. Hager observed Student during test sessions. Dr. Hager easily established rapport with Student. Student readily shared information about his family, friends, school, and current interests. Student was friendly, cooperative, and engaged in social conversation with Dr. Hager. Student did not require excessive breaks but had better motivation and attention to tasks during the afternoon testing sessions.

Dr. Hager interviewed Student. Student reported typical relationships with family and friends. Student reported enjoying school, especially lunch, recess, and mathematics. Student did not think he had trouble paying attention in class but had trouble planning and organizing his work.

Parents reported Student struggled with impulsivity, reading, writing, and mathematics. Student had attended six different schools and Parents were most impressed with his progress at NewBridge. Parents believed it was imperative Student remain at NewBridge because he thrived more there than at any other school.

Dr. Hager attempted to observe Student in his classroom at NewBridge, however, NewBridge did not facilitate an observation until after San Diego Unified held the IEP team meeting to discuss the results of the assessment. Dr. Hager amended the psychoeducational assessment report on January 24, 2023, to include the classroom observation at NewBridge.

COGNITIVE TESTING

Dr. Hager selected an extensive array of cognitive testing to compare Student's learning ability with similarly aged peers. Dr. Hager was careful not to administer any assessment subtests that Dr. Watson used in her June 2022, private psychoeducational assessment. Dr. Hager administered the

- Developmental Test of Visual-Motor Integration, Sixth Edition,
- Woodcock-Johnson Test of Cognitive Abilities, Fourth Edition,
- Kaufmann Assessment Battery for Children, Second Edition,
- A Developmental Neuropsychological Assessment, Second Edition,
- Cognitive Assessment System, Second Edition, and
- the Process Assessment of the Learner, Second Edition.

Dr. Hager assessed Student's basic sensorimotor functions to determine Student's ability to process visual, auditory, kinesthetic, and olfactory information. The Developmental Test of Visual-Motor Integration measured Student's ability to copy objects on paper. Student scored slightly below average on copying simple to complex designs and average on motor coordination. The Woodcock-Johnson measured Student's visual scanning skills. Student scored slightly below average on letter pattern matching, below average on number pattern matching, and average on paired cancellation. Dr. Hager determined Student presented with slightly below expected visual motor integration skills. Although Student's motor coordination was average, it was inconsistent across settings and when attempting to complete tasks with fluency.

Dr. Hager assessed Student's visuospatial cognitive processes to determine Student's ability to make visual discriminations, locate objects, and construct objects.

The Kaufmann measured Student's visuospatial perception by testing his visual motor construction and visual gestalt closure. Dr. Hager assessed Student's visual motor construction, which was slightly below average, by testing his ability to recreate shapes. Student's gestalt closure, or ability to figure out a picture that has a portion obscured or erased, was below average. The Kaufmann also assessed Student's visual spatial reasoning by measuring his ability to recognize spatial configurations, identify objects with missing parts, and match similar visual patterns. Student's ability to recognize spatial configurations was slightly below average. Dr. Hager determined Student presented with average ability for visual motor constructs, yet slightly below average visual spatial perception and reasoning because he could not manipulate physical objects.

Dr. Hager assessed Student's auditory and phonological cognitive processes to determine Student's ability to apply basic auditory and phonological processing skills. The Woodcock-Johnson measured Student's auditory and phonological processing by testing his word access, fluency, and substitutions. Student's auditory phonological processing was well below average.

Dr. Hager assessed Student's learning and memory cognitive processes to determine Student's ability to immediately recall information presented either verbally or visually in a variety of formats. The Developmental Neuropsychological Assessment measured Student's immediate verbal memory with story recall. Dr. Hager used the Cognitive Assessment System to measure Student's word recall. Dr. Hager used the Kaufmann to measure Student's number recall. Dr. Hager used the Woodcock-Johnson to measure Student's immediate visual memory, which was slightly below average. Dr. Hager used the Kaufmann to measure Student's verbal-visual associative learning, which was average. Overall, Dr. Hager determined Student presented with average

immediate verbal memory for words and numbers and verbal-visual associative learning. Student's immediate visual memory was slightly below average and his immediate verbal memory for stories was below average.

Dr. Hager assessed Student's executive functioning, looking at both cognitive executive functioning and behavioral emotional executive functioning. The Developmental Neuropsychological Assessment measured Student's verbal and visual cognitive flexibility, which was slightly above average. Dr. Hager assessed Student's visual deductive and inductive reasoning and sequential reasoning, which were slightly below average, using Cognitive Assessment System and Kaufmann. Dr. Hager assessed Student's quantitative reasoning and planning, which were average, using the Cognitive Assessment System and Woodcock-Johnson. The Cognitive Assessment System also measured Student's verbal response to inhibition, which was slightly below average. Dr. Hager also used the Behavior Rating Inventory for Executive Functioning, Second Edition to assess Student's ability to modulate his behavior. Parents' rating scales showed concern in the areas of

- inhibition,
- self-monitoring,
- planning and organization,
- working memory,
- task monitoring,
- behavioral and cognitive regulation, and
- overall executive functioning.

Teacher rating scales showed concerns in the areas of planning and organization.

Dr. Hager determined Student had slightly above average cognitive flexibility, average

problem solving, fluid reasoning, and planning skills, and a slightly below average response to inhibition. Dr. Hager also noted concerns among raters for Student's working memory and planning and organization.

Dr. Hager assessed Student's ability to allocate and maintain attention. Dr. Hager used the Developmental Neuropsychological Assessment and the Cognitive Assessment System to measure Student's auditory selective focused and sustained attention. Student performed in the average or above average level on those subtests. Dr. Hager used the Cognitive Assessment System and the Woodcock-Johnson to measure Student's visual and sustained attention, which was average. The results of the Cognitive Assessment System, Developmental Neuropsychological Assessment, and Kaufmann showed Student had average or slightly above average attentional capacity. Dr. Hager determined Student had average selective and sustained attention as well as attentional capacity.

Dr. Hager assessed Student's working memory to measure his ability to actively manipulate information retrieved from his memory. The Woodcock-Johnson assessed Student's ability to repeat numbers in reverse order and answer specific questions after listening to a series of animals and numbers. Student performed in the average range. Dr. Hager determined Student had average verbal and working memory.

Dr. Hager assessed Student's processing speed, fluency, and efficiency to measure his ability to quickly perform simple repetitive tasks. Dr. Hager used subtests from the Cognitive Assessment System and Woodcock-Johnson to measure Student's perceptual fluency. Student's scores ranged from below average to average. Student's naming fluency on the Developmental Neuropsychological Assessment subtest was below average. Student's oral fluency on the Cognitive Assessment System and

Developmental Neuropsychological Assessment were average. Student's psychomotor fluency on the Developmental Neuropsychological Assessment subtest was slightly below average. Dr. Hager used subtests from the Developmental Neuropsychological Assessment to measure Student's retrieval fluency, which ranged from slightly above average to below average. The Woodcock-Johnson acquired knowledge fluency subtest measured Student's reading fluency, which was well below average. Dr. Hager determined Student had below average performance and naming fluency, his retrieval fluency for words was commensurate to his phonological abilities, and his reading fluency was well below average.

Finally, Dr. Hager assessed Student's acquired knowledge. Dr. Hager used subtests from the Cognitive Assessment System, Woodcock-Johnson, Kaufmann, and the Process Assessment of the Learner to measure Student's

- oral expression,
- receptive language,
- semantic memory,
- reading and written language, and
- orthographic processing.

Orthographic processing measures the ability to code whole words into memory and recognize parts of those words. Student had mostly average acquired knowledge scores except for one slightly below average receptive language score, and well below average scores in orthographic processing.

Dr. Hager conducted a sufficiently comprehensive cognitive assessment that used multiple measures to determine Student's needs and abilities. San Diego Unified proved the cognitive assessments were a valid and accurate reflection of Student's abilities.

SOCIAL EMOTIONAL AND BEHAVIORAL ASSESSMENTS

Dr. Hager selected the Behavior Assessment Scale for Children, Third Edition, Behavior Rating Inventory of Executive Functioning, Second Edition, and the Multidimensional Anxiety Scale for Children, Second Edition to assess Student's social emotional and behavioral functioning and adaptive behaviors. Student had diagnoses of attention deficit hyperactivity disorder and general anxiety disorder. Dr. Hager obtained ratings scales from Parent, Student's teacher at NewBridge, and Student.

Parents reported at-risk and clinically significant ratings in the areas of

- hyperactivity,
- anxiety,
- depression,
- somatization,
- attention problems,
- executive functioning, and
- negative emotionality.

Parent's scores indicated a high probability for attention deficit hyperactivity disorder and a low risk for functional impairment.

Student's teacher reported an at-risk and clinically significant score for learning problems. The teacher's scores indicated Student's functional impairment was normal.

Student reported very elevated concerns for obsessive compulsive thoughts and behaviors, high average scores for physical symptoms and feelings, and a slightly elevated score for panic.

Dr. Hager analyzed the rating scales and determined there was a consensus that Student was generally performing well in the educational environment. Parents and one of Student's teachers had concerns with Student's working memory, attention, and planning and organizing. No one reported any significant behaviors or adaptive skill deficits in the school environment.

ACADEMIC ACHIEVEMENT

San Diego Unified proved its academic assessment of Student incorporated in the psychoeducation assessment was appropriate. Scheumann conducted the academic achievement assessment. Scheumann was an educational specialist with San Diego Unified with 18 years of experience. Scheumann had a bachelor's degree, a multiple subject teaching credential, and an education specialist credential. Scheumann conducted approximately 350 academic assessments over the course of her career.

Scheumann assessed Student using the Woodcock-Johnson Tests of Achievement, Fourth Edition. The Woodcock-Johnson is a norm-referenced standardized test of achievement used to assess basic academic skills. Student was articulate and Scheumann easily built rapport with him over the two days of testing.

Scheumann was highly knowledgeable about the Woodcock-Johnson test, Student's performance on the test, and Student's academic strengths and weaknesses. Scheumann provided a clear explanation of her assessment and scoring procedures. Her testimony was credible and persuasive.

Scheumann described Student as cooperative, engaging, and at ease during testing. Scheumann testified that the results were valid, reliable, and an accurate representation of Student's ability. Overall, Student scored in mostly the low or very low range on the academic composite areas, and in the underlying subtest areas. Scheumann concluded Student would continue to benefit from special education services. San Diego Unified proved the academic assessments were a valid and accurate reflection of Student's abilities.

PSYCHOEDUCATIONAL ASSESSMENT REPORT AND IEP TEAM MEETING

An assessor must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).) The report must also include relevant health and development, and medical findings, if any regarding the student. (Ed. Code, § 56327, subd. (e).) For a student with a learning disability, the report must explain whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services. (Ed. Code, § 56327, subd. (f).) The report must be provided to the parent after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

Dr. Hager produced a written assessment report that included Scheumann's academic assessment. The report detailed the basis of the assessment findings, and Dr. Hager's analysis of Student's suspected disabilities and areas of educational need. The assessment report included detailed information about Student's educational and health history, input from Parent, and a summary of Student's academic and social

emotional needs. The report also included detailed tables, graphs, and written discussion and interpretations of the results from the various informal and standardized tests, as well as the assessors' behavioral observations during testing.

There were several typographical errors in the report, random letter capitalizations, extra words that did not make sense, and two errors in scoring. However, Dr. Hager was forthcoming about the errors and acknowledged them during his testimony. Because of his candor, and that his testimony was undisputed, Dr. Hager's testimony that the scoring errors did not impact the test results was persuasive.

The assessment report analyzed whether Student met eligibility for special education and related services under the categories specific learning disability and other health impairment. (Cal. Code Regs., tit. 5, § 3030, subds. (a) and (b).) The report identified the legal eligibility criteria for each category. (*Id.*) Dr. Hager opined Student met eligibility for specific learning disability as a student with dual deficits. Student had deficits in both orthographical and phonological processing as well as perceptual fluency. Dr. Hager found a specific learning disability in reading, math, problem solving, and written expression. Dr. Hager opined Student continued to qualify for special education under specific learning disability.

Dr. Hager did not find that Student's attention deficit hyperactivity disorder impacted his education. When Dr. Hager assessed Student, he was taking medication to manage his symptoms. Student started taking medication after Dr. Watson's June 2022 private psychoeducational assessment. Dr. Hager opined the difference in his findings versus Dr. Watson's findings was significantly impacted by the medication.

On January 10, 2023, the IEP team discussed each component of the psychoeducational assessment report. Dr. Hager and Scheumann attended the IEP team meeting, and both presented their assessment results. (Ed. Code, § 56327, subds. (a), (b).) Parents attended the meeting and had the opportunity to ask questions about the assessments. Parents did not voice any concerns during the IEP team meeting.

After the IEP team meeting, Dr. Hager and Scheumann observed Student at NewBridge. During their observation, Student was attentive and on task. Student asked the teacher for assistance when needed. Student maintained attention and focus as expected. Dr. Hager and Scheumann agreed the classroom observation supported their observations during testing. Neither Dr. Hager nor Scheumann had any concerns after the NewBridge observation. Dr. Hager amended the psychoeducational report and Scheumann offered to convene a second IEP team meeting, which Parents declined.

San Diego Unified proved its psychoeducational assessment was appropriately conducted and the corresponding assessment report met statutory legal requirements. San Diego Unified's assessment plan and psychoeducational report were legally sufficient. Further, there was no evidence that contradicted Dr. Hager's and Scheumann's credible and persuasive testimony that the cognitive and academic assessments were valid and an accurate reflection of Student's abilities. As a result, San Diego Unified proved its January 6, 2023, psychoeducational assessment, as amended on January 24, 2023, including academic and corresponding reports, was appropriate and met all legal requirements.

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.

San Diego Unified's January 6, 2023, psychoeducational assessment, as amended on January 24, 2023, including academic and corresponding assessment reports was legally compliant such that Student is not entitled to an independent educational evaluation at public expense. San Diego Unified prevailed on the sole issue remaining in the consolidated case.

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 Dowd

Administrative Law Judge

Office of Administrative Hearings