

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,

V.

PARENTS AND CO-EDUCATIONAL RIGHTS HOLDER ON BEHALF
OF STUDENT.

CASE NO. 2023030716

DECISION

June 23, 2023

On March 21, 2023, Santa Monica-Malibu Unified School District filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Parents on behalf of Student. OAH continued the matter for good cause on March 29, 2023. Administrative Law Judge Rommel P. Cruz heard this matter by videoconference on May 9 and 10, 2023.

Attorney Gabrielle Ortiz represented Santa Monica-Malibu Unified. Director of Special Education Deanna Sinfield attended both hearing days on behalf of Santa Monica-Malibu Unified.

Parents and co-educational rights holder, Hadassah Foster, appeared on behalf of Student. Student did not attend the hearing.

At the parties' request, the matter was continued to May 22, 2023, for written closing briefs. OAH closed the record and submitted the matter on May 22, 2023.

ISSUE

Did Santa Monica-Malibu Unified's January 25, 2022 multidisciplinary psychoeducational assessment appropriately assess Student in all areas of suspected disability, such that Santa Monica-Malibu Unified is not required to fund a neuropsychological independent educational evaluation at public expense?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called 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, called a FAPE, 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 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, Santa Monica-Malibu Unified requested the hearing and had the burden of proof as to the sole issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was eight years old and in third grade at the time of the hearing. He resided in Santa Monica-Malibu Unified's geographic boundaries at all relevant times. Student was eligible for special education services under the categories of other health impairment because of attention difficulties, and specific learning disability.

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ISSUE: DID THE JANUARY 25, 2022 MULTIDISCIPLINARY
PSYCHOEDUCATIONAL ASSESSMENT APPROPRIATELY ASSESS
STUDENT IN ALL AREAS OF SUSPECTED DISABILITIES SUCH THAT
STUDENT IS NOT ENTITLED TO A PUBLICLY FUNDED INDEPENDENT
NEUROPSYCHOLOGICAL EVALUATION?

Santa Monica-Malibu Unified contends its January 25, 2022 multidisciplinary psychoeducational assessment of Student met all legal requirements. Therefore, Santa Monica-Malibu Unified argues Student is not entitled to an independent neuropsychological evaluation at public expense.

Student contends Santa Monica-Malibu Unified failed to conduct sufficient testing of Student's auditory processing abilities as part of the January 25, 2022 multidisciplinary psychoeducational assessment. Therefore, Student claims he is entitled to a publicly funded neuropsychological evaluation as a result of Santa Monica-Malibu Unified's failure.

At the hearing, the parties stipulated that Student did not request an independent neuropsychological evaluation based on Parents' and Foster's disagreement with any aspect of the January 25, 2022 speech and language, and occupational therapy assessments.

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).)

Santa Monica-Malibu Unified held individualized education program, called an IEP, team meetings on January 26, and February 1, 2023, to review Student's IEP. Parents and Foster attended the meetings, and requested that a neuropsychological evaluation of Student be conducted prior to developing his new IEP goals.

Director of Special Education Sinfield testified that Santa Monica-Malibu Unified interpreted Parents' and Foster's request for an independent neuropsychological evaluation to mean they disagreed with the psychoeducational evaluation portion of Santa Monica-Malibu Unified's January 25, 2022 multidisciplinary assessments of Student, which were the most recent assessments conducted of Student. The

January 25, 2022 multidisciplinary assessments also included speech and language, and occupational therapy assessments. Parents and Foster did not specify at the IEP team meetings, or prior to the hearing, what parts of the January 25, 2022 multidisciplinary assessments they disagreed with.

On February 13, 2023, Santa Monica-Malibu Unified provided Parents with prior written notice of its decision to deny Parents' request to fund an independent neuropsychological evaluation. Then, Santa Monica-Malibu Unified filed the due process hearing request in this matter.

THE JANUARY 25, 2022 MULTIDISCIPLINARY PSYCHOEDUCATIONAL ASSESSMENT MET ALL LEGAL REQUIREMENTS

ASSESSMENT PLAN

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).)

Santa Monica-Malibu Unified's November 17, 2021 assessment plan to conduct Student's three-year review assessments met all legal requirements. The assessment plan was written in English, Parents' native language. The plan described the possible tests and procedures to be conducted. The plan was written clearly, and in terms understandable by the general public. The plan clearly stated that no special education services would be provided to Student without Parent's written consent.

The November 17, 2021 assessment plan explained the information sought through the evaluation of various areas. The plan proposed to evaluate Student in the areas of

- academic achievement,
- health,
- intellectual development,
- language and speech communication development,
- motor development,
- social emotional functioning, and
- behavior.

The plan identified a school psychologist to assess Student's intellectual development, social emotional functioning, and behavior, and a specialized academic instruction teacher to assess his academic achievement. A school nurse would assess his health. A

speech-language pathologist would assess Student's communication development, and an occupational therapist would assess his motor development. The plan also stated the assessments would include a review of Student's educational records.

Parent provided written consent to the assessment plan on November 18, 2021. Santa Monica-Malibu Unified proved the November 17, 2021 assessment plan complied with all applicable statutory requirements regarding form, function, and notice.

QUALIFIED ASSESSORS

School districts must follow statutory guidelines for the qualifications of the assessors and the content of the assessments. Assessments must be conducted by individuals knowledgeable of the student's disability and competent to perform the assessment, as determined by the local educational agency. (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).)

The January 25, 2022 multidisciplinary psychoeducational assessment was performed by qualified assessors. Santa Monica-Malibu Unified established that credentialed school psychologist Breea Rosas was qualified to assess Student's intellectual development, and social emotional and behavioral functioning. Rosas had an education specialist degree in school psychology and held a pupil personnel services credential in school psychology. She was also a nationally certified school psychologist by the National Association of School Psychologists.

Rosas was a school psychologist for more than six years, the past two years in California with Santa Monica-Malibu Unified. She conducted more than 300 psychoeducational assessments in her career. About 100 of those assessments involved students eligible for special education under the category of other health impairment, and about 100 of those assessments involved students with a specific learning disability.

Santa Monica-Malibu established that specialized academic instruction teacher April Rosales was qualified to assess Student's academic achievement. Rosales had a master's degree in special education and an education specialist credential. She was credentialed to teach students with mild to moderate disabilities and moderate to severe disabilities.

Rosales taught special education since 2012. She conducted more than 120 academic achievement assessments in her career, including assessments of students who qualified for special education under the categories of other health impairment and specific learning disability.

Furthermore, Rosales had extensive experience working directly with Student. She provided Student with specialized academic instruction when Student was in kindergarten, through second grade. Student was in second grade during the 2021-2022 school year. Santa Monica-Malibu Unified established that its assessors were knowledgeable of Student's disabilities, and competent to perform the assessments with which they were tasked.

ASSESSMENT TOOLS AND STRATEGIES

School districts 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).) Assessment materials must be sufficiently comprehensive and tailored to evaluate specific areas of educational need to assist persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where the concern prompting the assessment was reading skills deficit].)

Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); 34 C.F.R. § 300.304(c)(1)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests and assessment materials must also be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication, unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i), (ii); 34 C.F.R. § 300.304(c)(1)(i), (ii); (Ed. Code, § 56320, subd. (a).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e).)

RECORDS REVIEW, INTERVIEWS, AND OBSERVATIONS

Santa Monica-Malibu Unified established that its psychoeducational assessment properly gathered relevant functional, developmental, and academic information about Student using a variety of assessment strategies. The assessors

- reviewed Student's developmental, health, and educational history,
- interviewed Student,
- obtained input from Parent and Student's teacher, and
- observed Student in the classroom and during testing.

The assessors knew Student was initially evaluated in January 2019, and found eligible for special education services. In 2019, Parents reported concerns about Student's speech development, eye contact and lack of focus during conversations. Parents also believed Student had difficulty understanding what was heard.

As part of the January 25, 2022 three-year review assessments, the school nurse screened Student's vision and hearing, and detected no concerns. The school nurse reported that Student had no health concerns.

Rosas also considered current input from Student, Parent, and Student's teacher. Rosas interviewed Student during testing, who shared he liked science, but not writing, and wanted to be a scientist when he grew up.

Parent described Student as gregarious and emotionally sound, with good coping skills. Student was loving and caring, especially towards other children. Parent

noticed an increase in Student's confidence. However, Parent was concerned about Student's inability to focus and concentrate, and worried that it could negatively impact Student's success as he got older.

Student's teacher also described Student as outgoing and friendly. Student was thoughtful and helpful. However, the teacher found Student struggled at times with peer relationships. The teacher reported that Student was literal in his thinking, and black and white, or absolute, about his views, which led to arguments with peers.

The teacher also reported Student to be impulsive and required additional time to think before acting. It appeared to the teacher that Student did not always hear directions. The teacher also reported concerns about Student's attention and memory.

Rosas observed Student in the classroom on two occasions. During both observations, Rosas observed Student off-task and distracted. During the first observation, Student

- fidgeted with a toy,
- was slow to begin an assignment by leaving his seat to gather a numbers chart, and
- continued to work on the assignment after he was told to turn it in.

During the second observation, he was

- rolling around the classroom in his chair,
- leaving his chair,
- going to the cubby area, and
- blurting aloud during whole group instruction.

During testing, the assessors observed Student at ease, cooperative, and attentive. At times, he was slow and careful in his responses. He would stare off, need questions repeated, and took frequent breaks.

Santa Monica-Malibu Unified established that its assessors properly relied on various strategies, including information from Parent, to gather relevant functional, developmental, and academic information about Student.

VALID SELECTION AND ADMINISTRATION OF TESTING INSTRUMENTS

Santa Monica-Malibu Unified established the testing instruments were selected to evaluate specific areas of Student's suspected needs, administered by qualified assessors, in accordance with the instructions provided by the producers of the tests, and relied on for the purposes for which the tests were designed. Santa Monica-Malibu Unified also established that the testing instruments were

- administered in Student's primary language,
- were validated and properly normed, and
- not racially, culturally, or sexually discriminatory.

Rosales assessed Student's academic achievement using the Wechsler Individual Achievement Test, Third Edition, and the Aimsweb-Plus Written Expression Curriculum Based Measure. Rosales administered each test in English, Student's primary language. She tested Student over four sessions, for a total of three to four hours.

Rosales was competent to administer, score, and interpret the measures she administered in assessing Student's academic achievement. She administered the

Wechsler Individual Achievement Test more than 50 times and the Aimsweb-Plus more than 20 times in her career. She administered Student's tests and interpreted the results in accordance with the publishers' protocols, yielding valid results.

The Weschler Individual Achievement Test was an individually administered measure of achievement in the areas of

- basic reading,
- reading comprehension,
- math problem solving,
- numerical operations,
- oral reading fluency, and
- written expression.

It assessed students ages four through 19 years and 11 months. The resulting scores showed how well a student performed compared to a group of children the same age across the United States. The Weschler Individual Achievement Test was a reliable and widely accepted assessment tool, and not racially, culturally, or sexually discriminatory.

On the Wechsler Individual Achievement Test, Student scored in the average range in math calculations, oral expression, and listening comprehension. Listening comprehension involved understanding the implicit and explicit meanings of spoken language. It involved the ability to follow directions, comprehend questions, and learn by listening and understanding. It also involved the ability to make connections to concepts already learned.

Student scored below average in

- basic reading skills,
- reading comprehension,
- math problem solving,
- oral reading fluency, and
- written expression.

Student scored below average range in all the subtests that made up the basic reading skills composite. Those subtests included early reading skills, word reading, and pseudoword decoding.

Student also scored below average in the sentence composition and spelling subtests, which made up the written expression composite. He also scored below average in reading comprehension, math problem solving, and reading fluency.

The Aimsweb-Plus Written Expression Curriculum Based Measure was a normed, reliable, and valid measure of a student's written expression skills, and designed to assess students through the sixth grade. Student's performance on the measure fell in the below average range.

Rosales also reviewed Student's performances on informal measures that assessed his reading and math skills. Fastbridge was a computer-based reading and math screening measure administered to students individually and compared a student's performance with other same-aged students nationally. Student's performance on Fastbridge fell in the below average range for broad reading and math

The Fountas and Pinnell Benchmark Assessment Systems was another informal measure that identified the instructional and independent reading levels of a student, and documented a student's progress through one-to-one formative and summative assessments. Rosales reviewed Student's performance on the Fountas and Pinnell assessments that showed Student was reading below grade level.

Rosales wrote in the January 25, 2022 multidisciplinary assessment report that Student did not have the necessary skills to access grade level reading, math, and writing curriculums. Rosales testified that at the time of her assessment, Student was reading at a late kindergarten, to early first grade level.

At hearing, Rosales opined Student needed additional phonics instruction to blend words to improve his basic reading and reading fluency skills. Rosales also opined Student had difficulty answering literal and inferential questions about passages he read, and Student's reading difficulties may have contributed to his poor math reasoning skills.

Rosas measured Student's intellectual development using the Wechsler Intelligence Scale for Children, Fifth Edition, the Comprehensive Test of Phonological Processing, Second Edition, and the Cognitive Assessment System, Second Edition. Rosas assessed Student's social emotional and behavioral functioning using the Behavior Assessment System for Children, Third Edition, Conners, Third Edition, and the attention composite of the Cognitive Assessment System.

Rosas tested Student over three sessions, for 40 to 60 minutes each session. Rosas administered each test in English. The tests were reliable and widely accepted assessment tools, and were not racially, culturally, or sexually discriminatory.

Rosas was competent to administer, score, and interpret the tests she administered. In her career, she had administered

- the Wechsler Intelligence Scale for Children about 200 times,
- the Comprehensive Test of Phonological Processing about 250 times,
- the Cognitive Assessment System about 50 times,
- the Behavior Assessment System for Children about 300 times, and
- the Conners about 100 times.

She administered each test and interpreted Student's results in accordance with the publishers' protocols, yielding valid results.

The Wechsler Intelligence Scale for Children was an individually administered clinical instrument for assessing the intellectual ability of children aged six years through 16 years and 11 months. It consisted of several subtests, each measuring a different facet of intelligence. The instrument provided composite scores that represented intellectual functioning in the areas of

- verbal comprehension,
- visual spatial processing,
- fluid reasoning,
- working memory, and p
- rocessing speed.

The Wechsler Intelligence Scale for Children also provided a score that represented a child's general intellectual ability, called a Full Scale Intelligence Quotient.

Based on Student's performance on Wechsler Intelligence Scale for Children, Student's crystalized knowledge, fluid reasoning, visual spatial processing, working memory, and processing speed were in the average range. His Full Scale Intelligence Quotient was also in the average range.

The Comprehensive Test of Phonological Processing measured an individual's phonological processing abilities. Rosas obtained composite scores for phonological awareness and rapid automatic naming. The phonological awareness composite measured the ability to mentally manipulate sounds in words. The rapid automatic naming composite measured long-term retrieval, which is the process of transferring information from short-term memory to long-term memory, forming new memories. Student's performance fell in the below average range for both composites.

Rosas testified she administered the phonological awareness subtest because it was highly correlated with difficulties in reading, including dyslexia. Readers with poor phonological processing abilities have difficulty blending words, and deleting and isolating sounds from words. Deficits in phonological awareness impacted a student's ability to properly decode, a common trait with dyslexia.

Rosas also testified that the rapid automatic naming composite also offered relevant information about Student's reading ability. Deficits in long-term retrieval made it difficult for a reader to read fluently because the reader could not efficiently recall information, such as the sounds of letters and different phonemes, from long-term memory.

Rosas measured Student's attention by administering the expressive attention and number detection subtests of the Cognitive Assessment System, Second Edition.

The Cognitive Assessment System was normed for children aged five through 17. The expressive attention subtest measured long-term retrieval. The number detection subtest measured processing speed. Student scored in the below average range for each subtest. The combined subtest scores provided a measure of Student's ability to sustain attention. The combined scores also fell in the below average range.

The Behavior Assessment Systems for Children used normed-referenced rating scales to measure emotional and behavioral difficulties, and adaptive skills. Parent and Student's teacher completed the rating scales. Parent reported an elevated concern in hyperactivity, and the teacher reported a significant level of concern in hyperactivity. Parent and the teacher reported elevated concerns with attention problems. Parent reported concerns about Student's executive functioning skills. The teacher reported concerns about learning problems.

The Conners used rating scales to measure a teacher's perception of a student's behaviors related to attention, conduct, and oppositional disorders. Ratings were quantified and compared to how other parents and teachers rated same-aged peers. Student's teacher rated him. The teacher reported significant concerns with hyperactivity, but typical behaviors related to defiance and aggression. The teacher also reported elevated concerns with Student's attention, learning, and executive functioning.

Santa Monica-Malibu Unified established that its psychoeducational assessment was sufficiently comprehensive in assessing Student's

- intellectual development,
- academic achievement,
- social emotional functioning, and
- behavior.

Santa Monica-Malibu Unified also established the assessment was tailored to the concerns reported by Parent and Student's teacher. The Behavior Assessment System for Children, Connors, and the Cognitive Assessment System, along with the assessors' observations, provided relevant information about Student's impulsivity, inattention, and black and white thinking. The Wechsler Intelligence Scale for Children's assessment of Student's reasoning skills also offered insight into Student's black and white thinking.

The Wechsler Intelligence Scale for Children and Cognitive Assessment System provided relevant information about Student's peer relations and social skills. Furthermore, the Wechsler Intelligence Scale for Children assessed Student's processing speed and memory, which provided information about the time it took for Student to think and respond, and ability to recall information.

Student argues Rosas improperly relied on a single tool, the Comprehensive Test of Phonological Processing, and failed to administer additional tests, such as the Test of Auditory Processing Skills, Fourth Edition, to assess Student's auditory processing abilities. Student argues Santa Monica-Malibu Unified failed to comprehensively assess whether Student had an auditory processing deficit that made it difficult for him to read. In addition, Student claims additional tests were necessary to evaluate Student's difficulties with following along in conversations, following spoken multi-step directions, and not understanding spoken questions as reported by his teacher.

Student's argument was not persuasive. As discussed above, Rosas and Rosales administered testing that revealed Student had poor reading skills that could have been caused by his weakness in phonological awareness.

In addition, Rosas properly relied on Student's performance on the Comprehensive Test of Phonological Processing, in addition to the tools administered by Rosales and speech-language pathologist Alyssa Fye to understand Student's auditory processing abilities and to investigate the concerns reported by the teacher.

Fye assessed Student in the area of speech and language. She prepared the speech and language portion of the January 25, 2022 multidisciplinary assessment report.

Fye assessed Student's listening comprehension skills using the listening comprehension scale of the Oral Written Language Scales, Second Edition. The listening comprehension scale measured the understanding of spoken language, also known as oral language reception. The listening comprehension scale required the examiner to orally present students with increasingly difficult words, phrases, and sentences. The student must choose one out of four images that correctly depicts the given word, phrase, or sentence. Student scored in the average range. At hearing, Fye opined that Student had average receptive language skills compared to peers his age.

Student's listening comprehension was also measured by the Wechsler Intelligence Scale for Children. Student's performance on the Weschler Intelligence Scale for Children showed Student could listen to sentences and passages, and answer comprehension questions as well as 45 percent of same-aged peers, also in the average range. At hearing, Rosales explained that Student's test results in listening comprehension was inconsistent with the teacher's reported concern that Student did not appear to hear spoken instruction. Rosales attributed the teacher's concerns to Student's attention difficulties, rather than a problem with understanding spoken language. No witness testified in contradiction to Rosales's opinion. Furthermore,

Student offered no testimony or documentary evidence to explain the Test of Auditory Processing Skills, or why the test should have been administered in addition to the tests administered by Santa Monica-Malibu Unified.

A preponderance of the evidence established that Santa Monica-Malibu Unified sufficiently assessed Student's auditory processing abilities, and the absence of additional testing, such as the Test of Auditory Processing Skills, did not compromise the January 25, 2022 psychoeducational assessment. Accordingly, Santa Monica-Malibu Unified proved that the January 25, 2022 multidisciplinary psychoeducational assessment was sufficiently comprehensive and evaluated Student in all areas of suspected disability.

WRITTEN REPORT

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).)

Santa Monica-Malibu Unified's written psychoeducational assessment report was appropriate. Rosas compiled the results for her assessment, Rosales's academic achievement assessment, Fye's speech and language assessment, and Santa Monica-Malibu

Unified's health and occupational therapy assessments into one written multidisciplinary assessment report dated January 25, 2022. Rosas provided Parents with a copy of the multidisciplinary assessment report on January 18, 2022.

The assessors concluded Student met special education eligibility criteria for other health impairment because of attention difficulties, and for a specific learning disability. The assessment report explained that the specific learning disability finding was based on a severe discrepancy between Student's overall intellectual ability and his academic skills. The assessors recommended Student receive specialized academic instruction to address his deficits in

- basic reading,
- reading fluency,
- reading comprehension,
- math reasoning, and
- written expression.

The assessors recommended various accommodations in the assessment report to support Student's attention difficulties and to encourage his timely completion of assignments. Among the recommended accommodations were shortened or chunked assignments, physical and mental breaks, re-direction and cues to stay on task. The recommended accommodations also included repetition and clarification of verbal instructions; as well as visual models for math equations, formulas, and outlines. Student would also receive reminders to turn in work and to work at an appropriate pace. The assessors did not rely on any single measure, tool, or score to support their findings and recommendations.

Accordingly, Santa Monica-Malibu Unified produced a written psychoeducational assessment report that complied with statutory guidelines, which included a recommendation and explanation of Student's qualification for special education services.

Rosas and Rosales presented the January 25, 2022 multidisciplinary psychoeducational assessment report to Parents and the IEP team on February 14, 2022. The IEP team determined Student continued to qualify for special education services because of attention difficulties and a specific learning disability. Parent provided written consent to the January 25, 2022 IEP on February 28, 2022.

In sum, Santa Monica-Malibu Unified's January 25, 2022 multidisciplinary psychoeducational assessment was timely and appropriate. The November 17, 2021 assessment plan met all legal requirements.

The January 25, 2022 multidisciplinary psychoeducational assessment was performed by qualified assessors. Rosas and Rosales possessed the necessary training, education, and experience, to competently administer, score, and interpret the assessments. The assessors used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Parent. The psychoeducational assessment was sufficiently comprehensive and assessed specific areas of Student's educational needs.

Santa Monica-Malibu Unified established that all the instruments were validated, properly normed, and not racially, culturally, or sexually discriminatory. Rosas and Rosales used the assessment instruments for the purposes they were designed for and administered the tests in accordance with the instructions provided by the producers of the tests, and their results were accurate. No single assessment tool or procedure was

the sole criterion for any decision or recommendation. Rosas properly prepared a written report summarizing the findings, and offered recommendations which Rosas and Rosales shared with Parents and the IEP team.

Santa Monica-Malibu Unified met its burden of proving by a preponderance of the evidence that the January 25, 2022 multidisciplinary psychoeducational assessment and report met all legal requirements. Accordingly, Student is not entitled to an independent neuropsychological evaluation at public expense.

CONCLUSION 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.

Santa Monica-Malibu Unified's January 25, 2022 multidisciplinary psychoeducational assessment appropriately assessed Student in all areas of suspected disability, such that Santa Monica-Malibu is not required to fund a neuropsychological independent educational evaluation at public expense. Santa Monica-Malibu Unified prevailed on the sole issue.

ORDER

Santa Monica-Malibu Unified's January 25, 2022 multidisciplinary psychoeducational assessment was legally compliant. Therefore, Santa Monica-Malibu Unified is not required to fund Student's request for an independent neuropsychological evaluation.

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.

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings