

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2023070149

DECISION

SEPTEMBER 19, 2023

On July 5, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Los Angeles Unified School District, called Los Angeles, naming Parents on behalf of Student. The matter was continued on the first day of hearing, August 1, 2023, prior to any testimony. Administrative Law Judge Alexa Hohensee heard witnesses and took evidence in this matter by videoconference on August 16 and 17, 2023.

Attorneys Patrick Balucan and Maria Cristina Cruz represented Los Angeles. Barbara Rainen appeared on behalf of Los Angeles. Parents did not attend on August 1, 16, or 17, 2023. Parents received notice of the hearing dates and of continued hearing dates by mail and email videoconference invitations. OAH staff attempted to contact Parents on the days of hearing, but Parents did not appear or respond.

At Los Angeles's request, the matter was continued to September 7, 2023, for written closing briefs. The record was closed, and the matter was submitted on September 7, 2023.

## ISSUES

1. Did Los Angeles appropriately assess Student in speech and language such that Student is not entitled to an independent educational evaluation at public expense?
2. Did Los Angeles appropriately assess Student in adapted physical education such that Student is not entitled to an independent educational evaluation at public expense?
3. Did Los Angeles appropriately assess Student in physical therapy such that Student is not entitled to an independent educational evaluation at public expense?
4. Did Los Angeles appropriately assess Student in occupational therapy 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, 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, called 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,

Los Angeles requested the hearing and had the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was three-year-old and in pre-kindergarten, called preschool, at the time of hearing. Student resided within Los Angeles's geographic boundaries at all relevant times. Los Angeles found Student eligible for special education under the category of autism. Student had a medical diagnosis of autism spectrum disorder, level three, requiring substantial support.

## ISSUE 1: SPEECH AND LANGUAGE ASSESSMENT

Parents requested an independent educational evaluation of Student in speech and language. Los Angeles contends that because its speech and language assessment was appropriate, Student is not entitled to an independent educational evaluation at public expense.

Assessment of students' disabilities must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment. (Ed. Code §§ 56320, subd. (g) and 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).)

Assessors must review existing evaluation data on the child, including:

- information provided by the parents,
- current classroom-based, local or State assessments, and classroom-based observations, and
- observations by teachers and related service providers.

(20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305(a)(1).) 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.)

When conducting assessments, assessors 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).) No single measure or assessment shall be the sole criterion for determining whether a child is a child with a disability. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Assessments must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category of the child. (34 C.F.R. § 300.304(c)(6).)

The assessor must use technically sound testing instruments that may assess the effect that cognitive, behavioral, physical, and developmental factors have on the functioning of the student. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3).) The assessments used must be:

- selected and administered so as not to be discriminatory on a racial or cultural basis,
- provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally,
- used for purposes for which the assessments are valid and reliable,

- administered by trained and knowledgeable personnel, and
- administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b)(3)(A); Ed. Code, §§ 56320, subds. (a) & (b).)

Assessments must be selected and administered so as to best ensure that, if the child has impaired sensory, manual, or speaking skills, the assessment results are accurate. The results must accurately reflect the child's aptitude or achievement level or other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors the test purports to measure. (34 C.F.R. §300.304(c)(3); Ed. Code, § 56320(d).) Assessment tools and strategies must provide relevant information that directly assists persons in determining the educational needs of the child. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. §300.304(c)(7); see also Ed. Code, § 56320, subd. (b)(1).)

The personnel who assess the student shall prepare a written report that shall include, without limitation, the following:

- whether the student may need special education and related services,
- the basis for making that determination,
- the relevant behavior noted during observation of the student in an appropriate setting,
- the relationship of that behavior to the student's academic and social functioning,
- the educationally relevant health, development, and medical findings, if any,

- if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage, and
- 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; see also 34 C.F.R. § 300.305(a)(1) and (2).)

The report must be provided to the parent at the IEP team meeting held to review the assessment. (Ed. Code, § 56329, subd. (a)(3).)

A student may be entitled to an independent educational evaluation if he or she disagrees with an evaluation obtained by the school district and requests an independent evaluation at public expense. (34 C.F.R. §300.502 (b)(1); Ed. Code, § 56329, subd. (b), Ed. Code, § 56506, subd. (c).) If a parent requests an independent educational evaluation, the school district must either fund the evaluation at public expense or file a due process complaint and obtain a final decision that its evaluation was appropriate. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

## FACTUAL FINDINGS APPLICABLE TO ALL ASSESSMENTS

Parent consented to Los Angeles' assessment plan and returned it to Los Angeles on January 24, 2023. The assessment plan stated that Los Angeles would assess Student in speech and language, adapted physical education, physical therapy, and occupational therapy, among other areas.

Los Angeles completed the assessments in May 2023, and each assessor prepared an assessment report. Los Angeles gave Parents copies of each of the assessment report several days before the IEP team meeting to review those reports.

The IEP team reviewed the assessments at a May 23, 2023 IEP team meeting. Parents and the assessors who performed the assessments were present along with other Los Angeles team members. Each assessor presented their report for the IEP team, solicited feedback from Parents, and answered any questions that Parents had about their assessment.

On May 25, 2023, Parents emailed Los Angeles to request independent educational evaluations in speech, adapted physical education, physical therapy, and occupational therapy. Los Angeles filed for due process with OAH on July 5, 2023, in response to Parents' request.

All of Los Angeles's assessors were qualified to conduct the assessments. Each assessor was properly credentialed and had the necessary training and experience to conduct assessments in their respective areas of expertise. Each of Los Angeles's assessors was familiar with Student's suspected disability of autism and had experience assessing children with autism.

The assessors used multiple assessments and a variety of assessment tools including records review, observation, interview, and standardized and non-standardized instruments to evaluate Student in

- health and development,
- communication development,
- functional and adaptive behavior,
- fine and gross motor ability, and
- sensory integration skills.



The assessors chose assessment instruments designed to gather information on Student's functional, developmental, and academic levels based on information known to the assessors, and the assessors were familiar with the assessments and their administration. The assessors chose instruments to guide Student's IEP team in determining Student's special education eligibility and designing an educational program to meet Student's needs.

Each assessor was aware of the common characteristics of students on the autism spectrum, the limitations imposed by Student's autism spectrum diagnosis, as well as Student's history of communication difficulties and attention deficits. They chose assessment instruments and strategies appropriate in light of Student's suspected disabilities to ensure accurate results. The variety of assessment tools and strategies used in each assessment was sufficiently comprehensive to gather the functional, developmental, and academic information on Student needed by the IEP team.

The assessments were not racially, sexually, or culturally biased, and were given in Student's primary language of English. The test instruments were valid for the purpose for which they were used. Parent was present to support Student during the assessments but did not interfere with the administration of standardized instruments. Each assessor identified which assessments could not be completed or were presented in such a manner that scores were not obtained or were not valid, and indicated the limited purposes for which such test results could be used.

The assessors noted in their assessment reports where modifications were required due to cognitive, behavioral, physical, or developmental factors, and how modifications may have impacted the results. None of the assessors relied upon a

single measure or criterion, and, together, the assessments in each area of the multidisciplinary assessment were sufficiently comprehensive to identify all of Student's educational needs, whether or not linked to Student's disabilities.

The assessors used technically sound test instruments. As a whole, the assessments demonstrated the effect of cognitive, behavioral, physical, and developmental factors on Student's functioning. The assessment results were valid and provided useful information regarding Student's

- health and development,
- social communication,
- social emotional functioning,
- behavioral functioning,
- adaptive behavior,
- cognitive processing,
- motor abilities, and
- use of assistive technology.

Each assessment report included the assessors' conclusions that Student should be considered for special education and related services, with their basis for making that determination. Each assessment report contained information on observations of Student in a variety of classroom, playground, and test settings. The assessors reported the relationship of Student's behavior to Student's pre-academic and social functioning, and educationally relevant health, development, and medical findings, including Student's diagnosis of autism spectrum disorder. The assessments reported no concerns with environmental, cultural, or economic disadvantage.

Since no one appeared at the hearing on Student's behalf, Student offered no evidence to contradict the results of Los Angeles's assessments or to persuasively criticize the assessment instruments or methods utilized. Student offered no evidence that Student had educational needs that were not identified, or to contradict the assessors' opinions based on the assessment results.

## SPEECH AND LANGUAGE ASSESSMENT

Shannon Broussalian, a licensed speech-language pathologist with a certificate of clinical competency from the American Speech-Language-Hearing Association, conducted Student's speech and language assessment. Broussalian had been a speech-language pathologist for over 14 years and had been on the Los Angeles preschool assessment team for six years. She trained on the assessment instruments and strategies used while earning bachelor's and master's degrees in communicative disorders with an emphasis in speech-language pathology. Broussalian had conducted between 600 to 1,000 preschool assessments over her career.

Broussalian assessed Student by reviewing records, interviewing Parents, and observing Student with other preschool team assessors in a room at the special education center Student would attend if she attended a Los Angeles preschool. The assessment room was set up as a typical preschool classroom with desks, chairs, and age-appropriate materials and toys. The assessment team also observed Student on the playground when other preschoolers were present. Assessors took turns interacting with Student and administering test materials while the other members observed. For example, Broussalian could note Student's utterances and communication skills while Student interacted with the occupational therapist during fine motor testing, or with the physical therapist during gross motor testing. Similarly, if Broussalian engaged Student

in a play activity to test vocabulary and verbal skills, the other assessors could observe Student's ability during that play to move throughout the classroom, manipulate toys, and reach for preferred items.

Broussalian interviewed Parent, who brought Student to the school site. Parent remained with Student throughout the assessments but did not interfere with the testing or alter the results. Parent's concerns with Student's language were

- Student's infrequent use of language,
- inability to understand simple commands,
- inability to self-advocate, and
- disinterest in engaging with others.

Broussalian could not interview teachers or review current school-based assessments because Student had not yet attended school.

Parent reported that Student had received speech therapy, occupational therapy, and physical therapy for several months prior to the assessment, funded by the North Los Angeles County Regional Center, called the Regional Center. Student also began receiving applied behavior analysis services through the Regional Center two weeks prior to the assessment, and Parent reported that Student was showing improved communication skills. Broussalian did not get any prior speech services reports from Parents but reviewed the Regional Center records.

In the assessment classroom, Broussalian observed that Student did not engage with the assessors or Parent. Student displayed a flat facial expression, avoided attempts by adults to engage with her by turning away, and refused to attend to structured tasks. At hearing, Broussalian and the other assessors consistently summarized Student's behavior as being very self-directed.

Broussalian chose test instruments and strategies based on the information she received from the Parent interview and records review. She attempted to administer several standardized tests but was unable to get Student to respond according to test protocols. Even when Broussalian modified the test instruments by modeling how to respond, prompting Student to respond, or repeating instructions, Student turned away and would not respond. Student used sounds and gestures to communicate, such as squeals of glee when playing with a balloon or pointing with her hand to a preferred item. However, Broussalian had to rely on observation of Student and on Parent's responses to rating scale questionnaires to determine Student's communication abilities. Broussalian opined in the report and at hearing that information on Student's refusal to participate despite multiple and varied adult efforts to engage her gave important information to the IEP team on the amount of adult support Student would need in the classroom.

Student would not permit Broussalian to conduct a physical exam of Student's mouth and throat to test Student's ability to make sounds, but Broussalian heard Student's ability to make various sounds during the assessment and found that Student's ability to produce sounds was not a suspected area of disability. Student made a few utterances of two words or less, but otherwise made non-word sounds. Broussalian looked for articulation errors and echolalia, the repetition of sounds or

scripts common in children with autism. However, Student refused to respond to a standardized articulation test and did not use sufficient words to determine Student's ability to articulate words. In addition, Student had not cooperated with her pediatrician or the school nurse on hearing screenings. Broussalian's report recommended Parents continue to monitor Student in case hearing problems were contributing to Student's delays in acquiring language.

Broussalian attempted to administer standardized tests of vocabulary and preschool-level language. These tests required Student to engage in various play-based tasks of naming and describing common items. These tests measured auditory understanding of language and expressive use of verbal language, including sentence structure and grammar. Broussalian had to abandon those tests due to Student's avoidance, self-directed behavior, and what Broussalian suspected was testing fatigue.

Broussalian observed Student throughout the assessment team's testing for social language skills, such as eye contact, physical distancing during conversation, and pausing when others are speaking. Student

- made gestures to request an item,
- imitated body actions and toy movements,
- played peek-a-boo, and
- made choices between two presented objects.

Student did not display many of the age-appropriate social skills on a social communication checklist used by Broussalian. Student displayed limited pre-communication behaviors, such as

- joint attention,
- nonverbal turn-taking,

- requesting,
- greeting,
- labeling, and
- responding to direct questions.

Parent told Broussalian that Student had limited play skills and did not initiate conversations with peers or engage with them.

Broussalian concluded in her report that receptively, Student followed simple commands with significant models and prompting, but did not understand prepositional concepts such as in or out, or a variety of nouns, adjectives, and verbs. Expressively, Student communicated with gestures such as pointing or shaking her head and made some two-word utterances. Pragmatically, she requested with gestures, uttered limited word approximations, and did not socially communicate with others in reciprocal conversations. Broussalian concluded Student had typical volume, pitch, and ability to pronounce phonemes, but Student's fluency skills could not be determined because Student was generally a non-verbal communicator and would need to be monitored as Student began speaking more. Broussalian reported Student was a non-verbal communicator with overall communication delays affected by Student's self-directed behaviors.

The report explained Student's behavior interfered with communication because Student needed the desire to communicate before she could meaningfully participate in conversational exchanges. Student was at the pre-communication level, with very limited language foundations. Broussalian noted she obtained valid assessment results by using multiple dynamic measures. Although the results were not standardized, they elicited Student's skill levels, her language and speech needs, and the impact her deficits

would have on Student's involvement and progress in grade-level curriculum. Broussalian found Student had a speech sound and language disorder that affected Student's ability to communicate and Student's involvement and progress in the general education curriculum. The report concluded Student might benefit from special education and recommended the IEP team consider whether Student needed language and speech services. At the May 23, 2023 IEP team meeting, Broussalian recommended Student attend a special education preschool program with two hours per week of embedded speech services.

Broussalian testified credibly and persuasively about the appropriateness of the speech and language assessment. Her explanations of assessment procedures, their purpose, and how results informed the IEP team were well-reasoned and informative. No evidence, expert or otherwise, contradicted Broussalian's opinions or the results of her assessment report. The speech and language portion of Los Angeles's multidisciplinary assessment accurately portrayed Student's speech and language needs. Despite Student's limited engagement, it identified all Student's functional communication needs in the school environment, summarized her present levels in speech and language, and provided Student's IEP team with accurate and helpful information for developing Student's educational program.

Los Angeles met its burden of proving by a preponderance of the evidence that its speech and language assessment was appropriate. Therefore, Student is not entitled to an independent speech and language assessment at public expense.

Los Angeles prevailed on Issue 1.



## ISSUE 2: ADAPTED PHYSICAL EDUCATION ASSESSMENT

Parents requested an independent educational evaluation of Student in adapted physical education. Los Angeles contends that because its adapted physical education assessment was appropriate, Student is not entitled to an independent educational evaluation at public expense.

Credentialed physical education teacher and adapted physical education specialist Victoria Bondar assessed Student's gross motor skills to see if Student could participate in grade-level physical education or would need adapted physical education. Bondar had a degree in kinesiology, was credentialed to teach physical education and adapted physical education, and had worked in adapted physical education for 20 years. She was an adapted physical education teacher and assessor for Los Angeles for 17 years, with six years on the preschool assessment team. She administered 80 to 100 assessments per year, and over 50 percent of assessments were for children with autism. She was knowledgeable about the impact autism had on the expression of physical abilities.

Bondar reviewed a report from the Regional Center, interviewed Parent, and observed Student in the classroom and on the playground with the preschool assessment team. Bondar administered a preschool motor assessment that tested motor performance in the areas of balance, locomotion, gross motor skills, and fine motor skills. The assessment was a checklist of age-appropriate motor skills designed to determine the appropriate physical education placement for students two to four years of age.

Parent's primary physical concern was with Student's balance and ability to walk. Bondar noted Student had a wide stance and a flat-footed gait. On the checklist of preschool motor skills, Student could walk forward, but she could not walk backwards, walk sideways for more than a step, or walk on tiptoes. Student could walk fast, but not run. Student could not jump on two feet or hop on one foot. She did not attempt to throw or catch a thrown or rolled ball, but she could catch a balloon against her chest. Student would walk into a ball in her path but would not attempt to kick it.

In other motor skills, Bondar observed Student could track movement when she chose to do so and did not display any aversion to handling different-textured objects. Student maintained fair balance but could not walk on a line. She could stretch up onto her toes to reach a preferred item but demonstrated difficulty with weight shifting. Student bumped into things and tripped a few times in the novel classroom environment, but she did not fall. She could navigate over different surfaces, such as a linoleum floor and grass, and generally avoided objects in her path. She could ascend stairs using a handrail but needed adult assistance to descend.

Student appeared physically fit and did not show signs of fatigue during the adapted physical education assessment. However, as Student would not follow Bondar's directions or imitate Bondar's movements for testing purposes, Bondar's report noted Student might be capable of a higher level of physical activity than demonstrated during the assessment.

Bondar reported Student's movement and static skills were not age appropriate but were developing. Bondar agreed with Parent that Student's balance was delayed but characterized Student's balance as a relative area of strength that supported

Student's enjoyment of movement and activity. Student's areas of weakness included diminished muscle tone, delayed locomotor patterns, decreased balance, motor control, and inattention during manipulation tasks such as catching, throwing, and kicking.

Bondar expressed concern in her assessment report that Student's difficulty with understanding directions, imitating movements, and joint attention would significantly impact Student's ability to participate in the physical education curriculum. Student could not learn exercises or game skills if she did not attempt modeled movements. Bondar concluded Student could benefit from special education without adapted physical education as a related service. Instead, Bondar recommended that an adapted physical education teacher collaborate with Student's classroom teacher and staff on teaching Student to attend and follow directions, which would eliminate those obstacles to participation in the physical education curriculum.

Bondar explained to the May 23, 2023 IEP team that Student's failure to follow teacher directions was the biggest obstacle to participation in physical education. Although Student's gross motor abilities were below age expectancy, it was possible Student could do more if she was compliant. Student needed joint attention and direction-following skills before participating in adapted physical education, and those skills were taught in the classroom.

Bondar's adapted physical education assessment was sufficiently comprehensive to identify all of Student's special education and related services needs for access to physical education. Bondar's results and conclusions accounted for the effect of cognitive, behavioral, physical, and developmental factors on Student's functioning in physical education. Bondar made one deviation from the checklist of physical tests by tossing a balloon, rather than a ball, to Student to test her ability to catch. However,

Bondar documented the change, and it did not diminish the accuracy and validity of information gathered about Student's balance, locomotor, gross motor, and fine motor skills. Bondar noted any test variations or insights such as Student requiring adult assistance to descend stairs. Bondar's report informed the IEP team of the level and types of interventions that were necessary for Student to access grade-level physical education.

Bondar had a professional demeanor and answered questions readily and in detail. Her explanations were clear, and her testimony was credible and persuasive. No evidence, expert or otherwise, contradicted Bondar's opinions or the results of her assessment report. Los Angeles's adapted physical education assessment accurately portrayed Student's gross motor needs for access to physical education. It identified all Student's needs for accessing California's physical education curriculum, summarized her present levels in those areas, and provided Student's IEP team with accurate and helpful information on her gross motor needs for developing Student's educational program.

Los Angeles met its burden of proving by a preponderance of the evidence that its adapted physical education assessment was appropriate. Therefore, Student is not entitled to an adapted physical education assessment at public expense. Los Angeles prevailed on Issue 2.

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### ISSUE 3: PHYSICAL THERAPY ASSESSMENT

Parents requested an independent educational evaluation of Student for physical therapy needs. Los Angeles contends that because its physical therapy assessment of Student was appropriate, Student is not entitled to an independent educational evaluation at public expense.

Licensed physical therapist Barie Spiegel conducted a physical therapy assessment of Student's ability to access school motor activities through movement, locomotion, transfer, and change of position. Spiegel had been licensed as a physical therapist for over 30 years, with 15 years of assessing preschool children for Los Angeles. She was also board certified in pediatric physical therapy and familiar with the effects of autism on children's motor abilities. Spiegel had completed over 1,000 assessments in her career, the majority of which were for preschool-age children. Unlike adapted physical therapist Bondar, who looked at Student's gross motor abilities for purposes of accessing California's physical education curriculum, Spiegel assessed Student's ability to access the school environment.

Spiegel evaluated Student's motor skills by reviewing a report from the Regional Center and Student's health report from the school nurse, interviewing Parent, conducting observations of Student in the classroom and on the playground, administering standardized preschool gross motor assessments, and completing a checklist of Student's integration of body structures and function. Parent reported Student had recently received physical therapy through the Regional Center. Parent was concerned about Student's walking balance and ability to climb stairs and reported that Student was not toilet trained.

Student did not follow instructions for administration of standardized tests of motor ability, so Spiegel modified the tests and assessed Student's abilities as observed during the assessment or reported by Parent. Student's score on a mobility and balance test was just within the range of expected motor performance for her age, but many of the mobility tasks were difficult for her or could not be performed, such as jumping on two feet or hopping on one foot. Spiegel administered a test of broad motor skills, and Student performed at the 18-month level, which was significantly delayed for a three-year-old. Student could pick up a toy from the floor without falling and carry a toy while walking. Student could walk on different surfaces such as linoleum and carpet, sit and get up from a chair, and access classroom materials. On this information, Spiegel concluded Student had sufficient mobility to participate in classroom activities but would require adult assistance to participate in toileting routines.

Spiegel observed Student on playground equipment and eating a snack. Student needed to be guided to equipment, but could crawl through a tunnel independently, navigated platforms with rail support, and could sit upright when going down a slide. Student could trap a slow-moving balloon to her chest, but could not catch or throw a ball, could not kick a ball, or ride a tricycle. Student sat upright at a table with prompting and ate her snack and drank from a sippy cup. Spiegel concluded that Student would require supervision and guidance for overall safety when on play structures and might need cuing to remain seated during snack times.

Spiegel prepared a report of the test results and observations, with the conclusion Student had delayed but functional skills in

- motor control,
- reactions to avoid injury,

- equilibrium,
- balance,
- motor planning,
- posture, and
- range of motion.

Although Spiegel could not test the limits of Student's strength because Student was unable or unwilling to follow directions, she noted that Student generally displayed weak but functional strength. The report concluded Student could freely access a classroom environment with adult guidance and support to help her remain seated and follow classroom routines. Student had sufficient mobility to access a school campus but would require adult assistance to complete toileting, use stairs, and to ensure her overall safety.

Spiegel's assessment report identified areas in which Student had functional skills as well as areas of need. Student's areas of strength included her ability to navigate level and some uneven surfaces and to transition from sitting to standing. Areas of need included Student's unsteadiness and her inability to negotiate steps without supervision or hand support. Spiegel's assessment noted Student's gross motor skills were immature but developing and would progress with skill practice and repetition embedded in the special education preschool curriculum. Spiegel's report concluded Student's autism impacted her functional mobility skills, which would impact Student's involvement and progress in general education curriculum.

Spiegel recommended the IEP team discuss and consider Student's mobility and motor skills to determine if Student was eligible for special education and related services. Spiegel recommended Student be placed in a special education preschool classroom, where Student could practice and repeat motor skills with classroom staff or

a physical therapist as part of the preschool curriculum. Spiegel also recommended supervision on the playground and on stairs for safety. At the May 23, 2023 IEP meeting to review her assessment, Spiegel recommended physical therapy services to support Student's access to the preschool setting.

Spiegel's physical therapy assessment was sufficiently comprehensive to identify all of Student's special education and related services needs to physically access the school setting. Despite Student's refusal to cooperate in testing, the information gathered by Spiegel demonstrated the effect of Student's disability and level of development on Student's ability to physically function on a school campus. Spiegel's deviations from publisher's instructions in testing were necessary to obtain accurate, valid, and reliable information about student's abilities and were documented in her report. This informed the IEP team of the level and types of interventions that were necessary for Student to access the educational program.

At hearing, Spiegel's testimony was credible and persuasive. Spiegel had a professional demeanor, answered all questions promptly, and provided insight into how Student's needs would impact Student's physical access to the classroom and school campus. No evidence contradicted Spiegel's opinions or the results of Spiegel's assessment report. Los Angeles's physical therapy assessment gathered relevant and accurate information on Student's functional performance that directly assisted the IEP team in determining Student's educational needs. It identified all of Student's gross motor and safety needs throughout the school day and summarized her present levels in those areas. The report provided Student's IEP team with information on how Student's disability impacted her access to the school environment so the IEP team could develop an educational program with the necessary services and supports.



Los Angeles met its burden of proving by a preponderance of the evidence that its physical therapy assessment was appropriately conducted. Therefore, Student is not entitled to a physical therapy assessment at public expense.

Los Angeles prevailed on Issue 3.

#### ISSUE 4: OCCUPATIONAL THERAPY ASSESSMENT

Parents requested an independent educational evaluation of Student for occupational therapy needs. Los Angeles contends that because its occupational therapy assessment of Student was appropriate, Student is not entitled to an independent educational evaluation at public expense.

Catherine Torres, a licensed occupational therapist for 25 years, assessed Student's fine motor abilities. Torres had been on the Los Angeles preschool assessment team for three years and completed hundreds of preschool assessments. She had additional certification in the administration and interpretation of sensory integration assessments, and possessed training and experience in administering the assessment tools she chose for Student. Torres had experience working with students with autism and understood the impacts of the disability.

Torres reviewed the Regional Center report, interviewed Parent, and observed Student in the classroom and on the playground. Parent reported concern about the strength in Student's hands for tool use and play. Parent reported Student received occupational therapy in the past that was helpful and requested further occupational therapy. Parent's responses to a questionnaire indicated Student had some fine motor and possible sensory issues.

Torres used observational tests and measures, to determine Student's current levels of performance. Torres employed best practices guidelines on abilities and skills that accounted for the curriculum, educational environment, and Student's abilities to determine her needs. Her assessment specifically looked at the abilities Student required to perform in the classroom and on the playground, to learn reading and writing, and for self-care throughout the school day.

Torres attempted to engage Student in various manipulative tasks but had limited success due to Student's disinterest in adult-directed tasks. She monitored Student's activities in the classroom to judge her need for support to participate in preschool activities. Student was awkward but displayed interest in catching a balloon, popping bubbles, pressing a bubble pop fidget, and scribbling on paper. Student appeared to enjoy playing on the playground equipment, although Student did not interact with other children on the playground. Student played with shaving cream and washed a toy in water without aversion to touch. However, Torres redirected Student when she put toys in her mouth, and played with a book instead of reading it, both of which demonstrated sensory seeking behaviors.

Torres observed that Student scanned her immediate environment but did not have the attention or interest to follow Torres's instructions for testing visual perceptual skills for school readiness. Student would not stack blocks or place coins in a bank, but she did scan a shelf to choose a book, removed a peg from a pegboard, followed bubbles to pop, and caught a balloon. Student demonstrated fine motor skills by picking up small items with an inconsistent pincer grasp, using a crayon with an immature grasp, and zipping her jacket. Student displayed the scanning and grasp skills necessary to learn writing but would not imitate drawing simple lines or circular scribble that is the foundation of forming letters. Student displayed basic self-care skills, such as

finger feeding and sipping from a cup. She displayed functional motor planning for simple gross motor skills such as climbing the ladder on the playground slide, but refused to participate in adult-directed manipulative tasks. Socially, Student played by herself and did not consistently respond to her name or make eye contact. Torres concluded in her report that Student's skill level would require adult assistance for Student to participate in preschool activities.

Torres reported that a special education preschool program would give Student consistent opportunities for manipulative play with peer models to improve participation and develop hand and motor skills. The report explained a preschool setting would also provide daily opportunities to participate in self-help skills such as learning toileting routines, putting things away, and washing and drying hands after eating and art activities. It would give Student daily opportunities to participate in group gross motor activities such as rhythmic body movements and playground activities, as well as fine motor activities involving multi-step directions. Torres reported preschool would also give Student opportunities and support to encourage social participation and meaningful engagement with peers.

Torres analyzed Student's sensory processing systems, which enabled Student to receive and make sense of information from her environment. Per Parent report and Torres' observation, Student did not overreact to different textures or items touching her skin, although she did mouth toys. Student bumped into things when distracted, displaying a decreased level of awareness of sensations from the muscles and joints.

Student's constant movement around the preschool classroom indicated she might be seeking a sense of movement, and she did not overrespond to movement on the playground equipment. Student was not overresponsive to classroom noises, such as a fan or toy sounds. Student was observed to seek visual input by staring at certain objects.

From this information, Torres concluded Student had limited preschool readiness in the areas of fine motor, visual motor, and visual perceptual skills, and engaged in mild sensory seeking behaviors. Student would need to be redirected when placing items in her mouth and given alternatives such as something she could chew on or a chewy snack. She noted that a special education preschool program would give Student opportunities for appropriate tactile play, manipulative play, and activities to increase her motor planning and tactile discrimination for tool use. Because Student sought visual input, Torres recommended the IEP team consider accommodations for Student such as minimizing visual distractions and giving visual and verbal cues to regain attention. Torres reported Student would require support from a trained special education teacher and staff to help her follow a preschool routine and transition from one task to another.

At the May 23, 2023 IEP team meeting, Torres reported on her assessment results and recommended Student receive occupational therapy for support in acquiring fine motor skills and sensory strategies. Her report provided accurate and valuable information to the IEP team on how Student processed information from the environment around her, and her disability-related needs in the areas of fine motor, visual motor, and visual perceptual tasks, as well as sensory processing.

Torres's testimony at hearing was credible, and her opinions on the appropriateness of the assessment and report were persuasive. Torres provided clear explanations of the assessment procedures and the relationship between the results and planning for Student's educational program. No evidence contradicted Torres's opinions or the results of the assessment report. The occupational therapy portion of Los Angeles's multidisciplinary assessment accurately identified all Student's fine motor, visual motor, visual perceptual, and sensory processing needs in the school environment, summarized her present levels in those areas, and provided Student's IEP team with the information necessary to develop Student's educational program.

Los Angeles met its burden of proving by a preponderance of the evidence that Los Angeles's functional behavior assessment was appropriately conducted. Therefore, Student is not entitled to a functional behavior assessment at public expense.

Los Angeles prevailed on Issue 4.

## CONCLUSIONS AND PREVAILING PARTY

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

### ISSUE 1.

Los Angeles appropriately assessed Student in speech and language, and Student is not entitled to an independent educational evaluation in speech and language at public expense.

Los Angeles prevailed on Issue 1.

ISSUE 2.

Los Angeles appropriately assessed Student in adapted physical education, and Student is not entitled to an independent educational evaluation in adapted physical education at public expense.

Los Angeles prevailed on Issue 2.

ISSUE 3.

Los Angeles appropriately assessed Student in physical therapy, and Student is not entitled to an independent educational evaluation in physical therapy at public expense.

Los Angeles prevailed on Issue 3.

ISSUE 4.

Los Angeles appropriately assessed Student in occupational therapy, and Student is not entitled to an independent educational evaluation in occupational therapy at public expense.

Los Angeles prevailed on Issue 4.

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## 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.

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings