

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PALM SPRINGS UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024100318

DECISION

December 9, 2024

On October 8, 2024, Palm Springs Unified School District filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Student. Administrative Law Judge Paul H. Kamoroff heard this matter by videoconference on October 29 and 30, 2024.

Attorney Maria E. Gless represented Palm Springs Unified School District, called Palm Springs. Cynthia Blumberg, Palm Springs's assistant director of special education, attended all hearing days on behalf of Palm Springs. Attorney Dana M. R. Pustinger represented Mother and Student. Mother attended all hearing days on Student's behalf. Father represented himself and Student and attended all hearing days.

At the parties's request, OAH continued the matter to November 25, 2024, for written closing briefs. The record was closed, and the matter was submitted on November 25, 2024.

## ISSUE

Was Palm Springs's May 30, 2024 psychoeducational assessment legally compliant, such that Student is not entitled to an independent psychoeducational assessment at public expense?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 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).) Palm Springs requested the hearing and had the burden of proof for the issue in this matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 12 years old and in seventh grade at the time of hearing. Student resided within Palm Springs's geographic boundaries at all relevant times. Student was not eligible for special education.

#### ISSUE: THE MAY 30, 2024 PSYCHOEDUCATIONAL ASSESSMENT

Palm Springs asserts its May 30, 2024 psychoeducational assessment was legally compliant, such that Student is not entitled to an independent psychoeducational assessment at public expense. Student disagrees and contends he is entitled to an independent psychoeducational assessment at public expense.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an individualized education program, referred to as an IEP, for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

To assess or reassess a student, a school district must provide proper notice to the parents. (20 U.S.C. § 1414(b)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the general public, explain the assessments that the district proposes to conduct, and state that the district will not implement an IEP without the parent's consent. (Ed. Code, § 56321, subd. (b)(1)-(4).) A school district must give the parents 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (c)(4).) The proposed written assessment plan must contain a description of any recent assessments that were conducted, including any available independent

assessments and any assessment information the parent requests to be considered, information about the student's primary language, and information about the student's language proficiency. (Cal. Code Regs., tit. 5, § 3022.)

The assessment must be conducted in a way that:

1. uses 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); see also Ed. Code, § 56320, subd. (b)(1));
2. does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability (20 U.S.C. § 1414(b)(2)(B); Ed. Code, § 56320, subd. (e)); and
3. uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414(b)(2)(C)).

The assessments used must be:

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

4. administered by trained and knowledgeable personnel; and
5. administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).)

The determination of what tests are required is made based on information known at the time. (*Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

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

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

6. If appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and
7. consistent with superintendent guidelines for low incidence disabilities (those affecting less than one percent of the total statewide enrollment in grades kindergarten through 12), the need for specialized services, materials, and equipment. Ed. Code, § 56327.)

Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

A student may be entitled to an independent educational evaluation if the parent disagrees with an evaluation obtained by the public agency and requests an independent evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an independent evaluation as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an independent evaluation].)

The provision of an independent evaluation is not automatic. In response to a request for an independent evaluation, an educational agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent

did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

A psychoeducational evaluation is a comprehensive assessment of a student's academic, cognitive, and social-emotional functioning. It is used to determine eligibility for special education and, following an eligibility determination, to update present levels of the student's functioning. (20 U.S.C. § 1414(b)(4); Ed. Code, § 56026.). A psychoeducational evaluation is normally conducted by a licensed or credentialed psychologist. (Ed. Code, § 56324, subd. (a) [any psychological assessment of a student shall be conducted by a credentialed school psychologist].)

Student attended seventh grade at James Workman Middle School, a Palm Springs school, at the time of the hearing. Student was bright and hardworking. He consistently earned high grades, including A's and A+'s, in honors-level courses. He interacted appropriately with both peers and adults and did not demonstrate maladaptive behaviors at school.

## THE ASSESSMENT PLAN

By letter on March 8, 2024, Mother requested Palm Springs assess Student for special education and related services. Palm Springs held its spring break over 10 days, from March 23, through April 7, 2024, and timely provided a written assessment plan to Mother on April 8, 2024. (Ed. Code, § 56321, subd. (a).)

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The plan proposed assessments in the areas of academic achievement, social/emotional functioning, adaptive behavior, health, perceptual/motor development, communication development, cognitive development, and health, by Palm Springs's specialists. Palm Springs included a copy of Parents's Rights and Procedural Safeguards with the assessment plan. Mother provided Palm Springs a signed copy of the assessment plan on April 10, 2024.

## THE MAY 2024 ASSESSMENT PLAN

Pursuant to the assessment plan, Palm Springs selected school psychologist Linda Jimenez, Ed.S., to conduct a psychoeducational assessment. Jimenez was assisted by special education teacher Stephanie Schenfeld, M.A., and Student's general education teachers Tara Baldwin, Rufino Cuevas, Eric Hershberger, and Mohamed Abdelhay. In addition to the psychoeducational assessment, a school nurse conducted a health assessment, and a school speech-language pathologist assessed Student's language and speech skills.

Palm Springs completed the psychoeducational assessment on May 30, 2024, in a written report entitled Psychoeducational Case Study Report. Palm Springs reviewed the report at an IEP team meeting on May 31, 2024, thereby completing the assessment within the required 60-day timeframe. (Ed. Code, § 56329, subd. (a)(3))

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The psychoeducational assessment included observations and interviews with Student's Honors English language arts teacher, Honors Math and Science teacher, Exploratory class teacher, and physical education teacher. The psychoeducational assessment included the following standardized testing:

- Woodcock Johnson Test of Cognitive Abilities, Fourth Edition;
- Wechsler Individual Achievement Test, Fourth Edition;
- Bender-Gestalt, Second Edition;
- Test of Visual Perceptual Skills, Fourth Edition;
- Test of Auditory Processing Skills, Fourth Edition; and
- Comprehensive Test of Phonological Processing Skills, Second Edition.

Parent and Student's general education teachers also completed rating scales as part of the assessment. The rating scales included the Behavior Assessment System for Children, the Connors, the Vineland Adaptive Behavior Scales, and the Autism Spectrum Rating Scales.

School psychologist Jimenez testified during the due process hearing in support of the psychological assessment. She held a bachelor's degree in psychology, a master's degree in educational psychology, and an Education Specialist degree in school psychology. She worked as a school psychologist since 2022, and conducted approximately 200 psychoeducational assessments. She was familiar with and experienced in using the tests she selected for Student, as well as with special education eligibility categories.

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Jimenez reviewed Student's family, medical, and educational history, including school records, grades, and prior school testing. She observed Student on six separate occasions, including during

- social studies,
- mathematics,
- science,
- physical education,
- Exploratory, and
- English language arts classes.

Student earned high grades in each class, with overall quarterly grades ranging from 92.8 percent to 100.4 percent in honors-level courses. Student was attentive in each class, followed instructions, and did not exhibit any behavioral problems.

As part of her assessment, Jimenez conducted separate interviews with Student, Mother and Father, and four of his teachers.

Jimenez used standardized testing to assess Student's intellectual abilities. Student's scores ranged from low average to average in each area tested. Jimenez used standardized testing to evaluate Student's perceptual and visual processing skills. Student demonstrated average visual-motor abilities and low-average recall skills.

Jimenez also used different standardized testing to assess auditory processing abilities and phonological processing related to reading. Student's auditory processing abilities ranged from borderline to average. In phonological processing, Student achieved scores ranging from poor to average on this test.

For the assessment of Student's social-emotional functioning, attention, behavioral development, and possible autism spectrum disorder, Jiminez used four different rating scales. The raters included four of Student's teachers and Mother. Raters consistently described Student as knowledgeable, goal-oriented, caring, compassionate, and skilled in sports. Concerns included that Student was socially awkward, quiet, and preferred to keep to himself.

Based on various standardized tests and norm-based rating scales, Jiminez determined that Student did not meet the criteria for eligibility for special education in any area, including specific learning disability, autism, or other health impairment.

Jiminez credibly testified that the psychoeducational assessment was conducted in all areas of suspected disability. The testing, evaluation, materials, and procedures were used for the purposes of the evaluation and were selected and administered so as not to be racially or culturally discriminatory. The testing materials were validated for the specific purpose for which each was used. Jiminez was trained and experienced in using the tests she selected for the assessment, and the tests were conducted in accordance with the instructions provided by the test publisher. Tests and other assessment materials included those tailored to assess specific areas of educational needs and not merely those designed to provide a single, general intelligence quotient. Student was assessed in English, his native language. The results of the assessments were valid and reliable estimates of Student's current level of functioning. There was no evidence provided during the hearing that impeached Jiminez's testimony or the validity of her assessment.

Special education teacher Schenfeld assessed Student's academic abilities as part of the May 30, 2024, psychoeducational assessment. During the hearing, she provided credible testimony in support of the assessment. Schenfeld selected the Wechsler Individual Achievement Test, Fourth Edition, to assess Student's academic abilities. She had conducted approximately 100 academic assessments and had used the Wechsler test 20 times prior to Student's testing. She was familiar with and experienced in administering this test.

Schenfeld assessed Student's

- reading,
- written expression,
- mathematics,
- basic reading,
- decoding,
- math fluency,
- oral language, and
- phonological processing.

Student received scores ranging from low average to average in each area tested.

Schenfeld credibly testified that the assessment adequately assessed Student's academic abilities. The testing, materials, and procedures were used for the purposes of the evaluation and were selected and administered so as not to be racially or culturally discriminatory. The testing materials were validated for the specific purpose for which they were used. The tests were conducted in accordance with the instructions provided by the test publisher. Schenfeld assessed Student in English, his native language. The

results of the testing were valid and reliable estimates of Student's current level of academic functioning. There was no evidence provided during the hearing that impeached Schenfeld's testimony or the validity of her testing.

## THE IEP TEAM MEETING

Palm Springs convened an initial IEP team meeting on May 30, 2024, to review the assessments. All required participants were present, including Parents and Mother's attorney. During the meeting, the school nurse presented the health assessment, followed by the school psychologist, who reviewed the psychoeducational assessment. The assessment provided information on Student's cognitive abilities, academic performance, and the results of evaluations for eligibility under the categories of specific learning disability, autism, and other health impairment.

However, the IEP was not finalized during this meeting. The IEP team, including Parents and Mother's attorney, agreed to reconvene on September 6, 2024, a mutually agreed-upon date following the summer break.

The IEP team reconvened on September 6, 2024, with all required participants present. Parents and Mother's attorney attended both meetings and actively participated in discussions about the assessments, Student's history, and his current performance levels. The IEP team noted that Student was enrolled in Honors general education classes and had earned straight A's during his sixth-grade year. Teachers reported that Student was performing well academically and socially. Although Student was diagnosed with mild attention deficit hyperactivity disorder by an outside assessor in spring 2024, this condition did not hinder his ability to succeed in general education. His exceptional grades in challenging courses demonstrated that he could access and

benefit from the curriculum without requiring special education services. After a thorough discussion, the IEP team determined Student was not eligible for special education or related services.

At no point during the IEP team meetings did Parents, Mother's attorney, or any other participants express disagreement with the validity or comprehensiveness of the psychoeducational assessment.

### THE INDEPENDENT EDUCATIONAL EVALUATION REQUEST

On September 9, 2024, Mother sent a letter requesting that Palm Springs fund an independent psychoeducational evaluation. In the letter, she acknowledged Student's academic success and did not dispute the school's assessment, except for its conclusion that Student was not eligible for special education.

On September 27, 2024, Palm Springs sent Mother a prior written notice wherein it denied funding for an independent psychoeducational evaluation because it believed its assessment met all legal requirements. Palm Springs timely filed for due process on October 8, 2024, to defend its assessment, less than one month following Mother's request for the independent educational evaluation. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (c).)

### PARENTS' TESTIMONY

During the hearing, Mother testified that Student should be eligible for special education. However, she did not describe any particular problems with the school's psychological assessment or specific tests included in the assessment.

Father also testified but was opposed to Student being found eligible for special education. Father was pleased with Student's progress at school, and did not want that disrupted by unnecessary special education services. His testimony did not support a need for an independent educational evaluation.

Student called no other witnesses to support Mother's request for an independent psychoeducational evaluation. The evidence submitted by Palm Springs overwhelmingly outweighed the evidence submitted by Student. In particular, Jiminez and Schenfeld persuasively testified to the adequacy of the school's psychoeducational assessment.

In his closing brief, Student contends the school's psychoeducational assessment was inadequate because the assessors lacked experience in testing students who are twice exceptional, presumably meaning a child with both a disability and above-average intelligence. However, during the hearing, Student did not provide evidence to demonstrate that he was disabled or possessed above-average intellectual ability. Student failed to present any evidence that he was twice exceptional, nor did he offer any evidence to show what the Palm Springs assessors should have done differently had he been twice exceptional.

Student also argued that he should have been deemed eligible for special education because his Honors English language arts teacher allowed him accommodations in the classroom, such as extra time for assignments and preferential seating. However, Student did not demonstrate why accommodations provided by a general education teacher in a general education setting necessitated eligibility for special education or impugned the adequacy of the school's psychoeducational



assessment. Moreover, Student earned identical grades in other classes, including an A+ in Exploratory, A+ in Honors Math, and A+ in Honors Science, during the same timeframe, all without accommodations.

Student's other arguments in his closing brief were also unpersuasive and failed to prove any defect in Palm Springs's assessment.

A preponderance of the evidence submitted at hearing showed that Palm Springs's May 30, 2024 psychoeducational assessment met all legal requirements. The assessment covered all areas of suspected disability and was administered by trained and qualified professionals. The assessors competently followed the instructions provided by the test publishers, ensuring the proper administration of all assessment measures. As a result, the assessment produced valid and reliable data on Student's current levels of functioning.

Therefore, Palm Springs is not required to fund an independent psychoeducational evaluation for Student.

## 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.

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## ISSUE:

Palm Springs's May 30, 2024, psychoeducational assessment was legally compliant, such that Student is not entitled to an independent psychoeducational assessment at public expense.

Palm Springs prevailed on the issue.

## ORDER

1. Palm Springs is not required to fund an independent psychoeducational assessment for Student.

## 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.

PAUL H. KAMOROFF

Administrative Law Judge

Office of Administrative Hearings