

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022050832

CHARTER OAK UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

October 4, 2022

On May 23, 2022, the Office of Administrative Hearings, called OAH, received a due process hearing request from Charter Oak Unified School District, called Charter Oak Unified, naming Student as the respondent. On June 6, 2022, OAH granted Charter Oak Unified's request to continue this matter.

Administrative Law Judge Judith L. Pasewark heard this matter by videoconference in California on August 24, 25, and 26, 2022. Attorney Courtney Brady

represented Charter Oak Unified. Charter Oak Unified's Director of Special Education, Jonathan Raymond, attended the hearing each day on Charter Oak Unified's behalf. Parent, self-represented Student, and attended the hearing each day on Student's behalf. Student did not attend the hearing.

At Charter Oak Unified's request, OAH continued this matter to September 8, 2022, for written closing briefs. The parties timely filed closing briefs, the record was closed, and the matter was submitted on September 8, 2022.

ISSUE

Did Charter Oak Unified provide an appropriate multidisciplinary assessment and assessment report, dated April 26, 2022, such that it is not required to fund an independent educational evaluation at public expense?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006) [All references herein to the Code of Federal Regulations are to the 2006 version unless otherwise indicated.]; 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, referred to as 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) and (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).) In this case, Charter Oak Unified filed the due process complaint 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).)

At the time of the hearing, Student was seven years old and in the second grade. Student resided with her parents within Charter Oak Unified's boundaries. Student had not previously been assessed or found eligible for special education.

LEGAL FRAMEWORK

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

ISSUE: DID CHARTER OAK UNIFIED PROVIDE AN APPROPRIATE MULTIDISCIPLINARY ASSESSMENT AND ASSESSMENT REPORT, DATED APRIL 26, 2022, SUCH THAT IT IS NOT REQUIRED TO FUND AN INDEPENDENT EDUCATIONAL EVALUATION AT PUBLIC EXPENSE?

Charter Oak Unified contends its April 26, 2022 multidisciplinary assessment was administered by qualified assessors and met all statutory requirements. For that reason, Charter Oak Unified asserts it is not obligated to fund an independent multidisciplinary educational evaluation to assess Student in the areas of health, psychoeducation, academics, speech and language, and occupational therapy.

Student contends Charter Oak Unified's multidisciplinary assessment was not appropriate because Charter Oak Unified failed to look beyond Student's grades. Student contends Charter Oak Unified failed to consider the diagnoses and recommendations of Student's June 2021 private neuropsychological assessment.

Student further contends Charter Oak Unified's assessment indicated Student had elevated ranges for behaviors associated with attention deficit hyperactivity disorder and that those behaviors affected Student's academic performance. Finally, Student contends Charter Oak Unified failed to consider teacher reports of Student's difficulty staying on task and completing tasks, and work samples displaying Student's difficulty with spelling, written expression, and penmanship.

ASSESSMENT PLAN AND PARENTAL CONSENT

A child with a disability is defined by statute to mean a child who has been evaluated and identified with one or more of a number of specific disability classifications, and "by reason thereof" needs to be provided with special education and related services. (20 U.S.C. § 1401(3)(A); 34 C.F.R. § 300.8(a).) A student qualifies as an individual with exceptional needs and is therefore eligible for special education and related services if an IEP team determines that the results of a legally compliant assessment demonstrate the child has a disability, and the degree of the child's impairment requires special education and related services that cannot be provided with modification of the regular school program. (Ed. Code §§ 56026, 56320; Cal. Code Regs., tit. 5, § 3030, subd. (a).)

A school district must assess the child in all areas of suspected disability before determining whether a child qualifies for special education services. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.301(a); Ed. Code, § 56320, subd. (f).) The school district must follow statutory guidelines that dictate both the content of the assessments and the qualifications of the assessors. 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.)

An assessment may not be done without parental consent. To obtain parental consent for an assessment, the school district must provide proper notice to the student and their parent within 15 days of an assessment being requested by parents. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The assessment plan must be in a language easily understood by the public and in the native language of the parent, explain the types of assessments to be conducted, and notify parents that no IEP will result from the assessment without the consent of the parents. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Charter Oak Unified proved its April 26, 2022 multidisciplinary assessment met all procedural requirements. On February 10, 2022, Charter Oak Unified received an email from Parent requesting an initial assessment to determine whether Student was eligible for special education and related services. Parent provided a copy of Student's June 15, 2021 private neuropsychological evaluation conducted by Paul Mancillas, Ph.D., which provided a diagnosis of attention deficit hyperactivity disorder. Parent expressed concerns about, among other things, Student's

- learned information retention,
- cognitive processing,
- visual and audiological regressing,
- writing skills,
- math skills,
- executive functioning,
- learning development delays,
- daily life skills,

- functional behavior,
- performance anxiety,
- depression, and
- coordination.

Student's sibling had been diagnosed with autism spectrum disorder, and Parent was concerned Student also exhibited behaviors characteristic of autism.

Parent requested a full and comprehensive assessment. Parent requested the assessment report include Student's

- case history,
- pre and post test scores,
- standard scores and percentile rankings, and
- grade and age equivalent scores.

Parent also requested the report include Student's educational needs and a description of the educational program Student required.

Charter Oak Unified timely provided Parent with a special education initial assessment plan on February 18, 2022. Charter Oak Unified considered Dr. Mancillas' assessment findings in determining Student's areas of suspected need. The assessment plan proposed to assess Student's intellectual development, social-emotional behavior, and motor development by a school psychologist. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) A general education teacher would assess Student's academic achievement. Student's health information would be gathered by a school nurse. The

assessment would include a review of school records and further review of Dr. Mancillas' assessment report. Parent acknowledged receipt of Parental Safeguards and returned the signed assessment plan on February 28, 2022.

During an assessment interview, Parent raised additional concerns regarding autism, attention deficit hyperactivity disorder, sensory issues, and anxiety, and requested additional assessments be added to the initial assessment plan. On March 21, 2022, Charter Oak Unified provided Parent with a supplemental assessment plan which added a language and speech communication assessment by a speech and language pathologist, and a motor development assessment by an occupational therapist. Parent signed the March 21, 2022 assessment plan which Charter Oak Unified received on April 4, 2022, upon return from spring break.

Both of the assessment plans indicated the assessors would use standardized tests, interviews, record review, observations, and alternate assessments when necessary. Each plan was in Student's primary language of English, described the proposed assessments, and explained the assessments would be reviewed at an IEP team meeting before a program was proposed and, with Parents' consent, implemented. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Charter Oak Unified established the February 28, 2022 and March 21, 2022 assessment plans met the procedural requirements under IDEA and the California Education Code. Charter Oak Unified also established it obtained Parent's consent to conduct the April 26, 2022 multidisciplinary assessment of Student. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3), (c)(1); Ed. Code, § 56321, subd. (a).)

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

Here, Charter Oak Unified received the initial and supplemental assessment plans on February 28, 2022, and April 4, 2022, respectively. Charter Oak Unified completed the multidisciplinary assessment and held the initial IEP team meeting to discuss the assessment results on April 26, 2022. This was 58 calendar days from receipt of the initial assessment plan and 23 calendar days from receipt of the supplemental assessment plan. Therefore, Charter Oak Unified established it completed the multidisciplinary assessment and held Student's initial IEP team meeting within the statutorily required 60 day timeline.

PARENT'S REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

Under certain conditions, a parent may request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).) In response to a request to pay for an independent educational evaluation, a school district must, without unnecessary delay, either file a request for due process hearing to show that its evaluation was appropriate or provide the independent educational evaluation at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (b) and (c); *Baquerizo v. Garden Grove Unified Sch. Dist.* (9th

Cir. 2016) 826 F.3d 1179, 1185.) If the final decision resulting from the due process hearing is that the evaluation was appropriate, the parent still has the right to obtain an independent educational evaluation, but not at public expense. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

Parent did not agree with the adequacy of Charter Oak Unified's multidisciplinary assessment. During the April 24, 2022 IEP team meeting, Parent requested an independent educational evaluation in each area Charter Oak Unified assessed. On April 29, 2022, Parent sent Charter Oak Unified an email reiterating her request for independent educational evaluations. Parent requested a prior written notice if Charter Oak Unified denied her request. Charter Oak Unified declined to fund an independent educational evaluation and provided prior written notice to Parent on May 12, 2022. The prior written notice complied with the requirements set forth in title 34 Code of Federal Regulations section 300.503. Charter Oak Unified informed Parent it would file a due process hearing request to defend the appropriateness of the multidisciplinary assessment.

Charter Oak Unified filed a request for due process hearing on May 23, 2022, to defend the appropriateness of the multidisciplinary assessment. This was less than one month after Parent notified Charter Oak Unified of her request for an independent educational evaluation. Therefore, Charter Oak Unified acted without unnecessary delay in responding to Parent's request for an independent educational evaluation. (Ed. Code, § 56329; *see J.P. v Ripon Unified Sch. Dist.* (E.D. Cal. April 15, 2009, No. 2:07-CV-02084-MCE-DAD) 2009 WL 1034993.)

MULTIDISCIPLINARY ASSESSMENT

Charter Oak Unified contends its multidisciplinary assessment was conducted by qualified assessors who appropriately administered and interpreted a variety of valid and reliable assessment instruments. Student contends the assessors were not qualified, failed to administer complete testing tools, and failed to accurately record and interpret Student's scores.

In conducting an assessment, a school district must follow statutory guidelines that determine both the content of the assessment and the qualifications of the assessors. The school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) The school district must select and administer assessment materials in the student's native language and that are free of racial, cultural, and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i); Ed. Code, § 56320, subd. (a).) The assessment materials must be valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd. (b)(2).) They must be sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable, and competent personnel must administer the assessments in accordance with any instructions provided by the producers of such assessments. (20 U.S.C. § 1414(b)(A); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56320, subd. (b)(3).)

Individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area, must conduct assessments of students' suspected disabilities. (20 U.S.C. § 1414(b)(3)(B)(ii); Ed. Code, § 56320, subd. (g).) A

psychological assessment must be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, § 56324, subd. (a).) Assessors are prohibited from relying on a single measure or assessment as the sole basis for determining whether a child is eligible for special education or the appropriate content of an eligible student's IEP. (20 U.S.C. § 1414 (b)(2)(A); Ed. Code, § 56320, subd. (e).) The evaluation must be sufficiently comprehensive to identify all of the child's needs for special education and related services whether or not commonly linked to the disability category in which the child has been classified. (20 U.S.C. § 1414(b)(3); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).)

Education Code, section 49422, subdivision (e)(1)(B) provides that no person who is an employee of a school district shall administer psychological tests ... unless at least one of the following applies ... (B) a school psychology intern may perform the testing or activities under the supervision of a person who holds a credential as a school psychologist.

PSYCHOEDUCATIONAL ASSESSMENT

Charter Oak Unified proved it conducted the multidisciplinary assessment appropriately. Charter Oak Unified school psychologist Lori Hidalgo conducted Student's initial psychoeducational assessment and prepared a comprehensive multidisciplinary assessment report which included assessments in the areas of

- health,
- psychoeducation,
- academics,

- speech and language, and
- occupational therapy.

Hidalgo, a licensed educational psychologist, held a bachelor's degree in psychology, a master's degree in special education, as well as a pupil personnel services credential. Hidalgo, employed as a school psychologist for 23 years, conducted over 500 special education assessments during her career. Hidalgo's education, credentials, and experience qualified her to conduct psychoeducational assessments, administer standardized tests, interpret the results, prepare assessment reports, and supervise school psychologist interns.

At hearing, Hidalgo answered questions candidly and exhibited a strong understanding of assessment procedures. Hidalgo answered Parent's questions about test protocols and perceived scoring inconsistencies. Hidalgo's testimony regarding the assessment and her conclusions were well-reasoned, and withstood Parent's attempts to discredit the assessors, the assessment protocols, and test scorings. Hidalgo's testimony, corroborated by other witness testimony, was given significant weight.

Juan Ramirez, a Charter Oak Unified school psychologist intern, assisted Hidalgo with Student's assessments. Ramirez held a bachelor's degree in psychology and a master's degree in school psychology. Ramirez worked as a school psychologist intern so that he could complete his pupil personnel services credential. Ramirez was authorized to conduct assessments under the supervision of Hidalgo. At hearing, Ramirez displayed significant knowledge of the assessments he administered as well as knowledge of the corresponding testing instructions and manuals. His testimony was credible.

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

Hidalgo assessed Student in all areas of suspected disability. Hidalgo considered whether Student met eligibility criteria under multiple special education categories, including

- specific learning disability,
- autism,
- other health impairment,
- speech and language, and
- occupational therapy.

Hidalgo chose a variety of assessment tools to conduct Student's psychoeducational assessment, including standardized tests, rating scales, observations of Student in the classroom setting and during assessments. Hidalgo conducted interviews with Student and Parent, reviewed Student's educational records, including grades and testing scores, and reviewed a developmental history and questionnaire completed by Parent.

Hidalgo obtained Student's background information through an educational records review, and records provided by Parent. Parent provided input in the multidisciplinary assessment through completing the parent questionnaire and assessment rating scales and participating in an interview.

HEALTH SCREENING

As part of the multidisciplinary assessment, Camille Virata, a Charter Oak Unified school nurse, conducted Student's health screening. Virata, a licensed registered nurse, held a California Preliminary School Nurse Services credential and school audio metrist credential. Parent completed a health and developmental questionnaire. Virata conducted Student's hearing screening on March 2, 2022. Virata tested Student's vision, with and without her glasses on March 8, 2022. Student passed both the hearing and vision screenings. Virata noted Student's diagnosis of attention deficit hyperactivity disorder, as well as Parent's concerns regarding Student's appetite. No other health concerns were identified or reported. The health screening was appropriate and not disputed by Parent.

OBSERVATIONS AND INTERVIEWS

Hidalgo and Ramirez observed Student during test sessions. Student eagerly responded at the beginning of each test and answered rapidly, but once questions began to rise in difficulty, Student often looked around the room and required prompting to return to the testing. Student fidgeted throughout the testing yet appeared to remain focused on the task. She required movement breaks but was able to return to the task immediately following the break. Both Hidalgo and Ramirez opined the testing sessions were age appropriate and test results valid.

Ramirez observed Student in her first-grade classroom. Student required additional prompting when directed to take out her laptop. Once students began working independently, Student required additional prompting when to return to looking at her laptop screen. Student finished her assignment, and began to talk with a peer, until prompted to return to the next assignment.

Hidalgo observed Student in the classroom on a different date. Hidalgo noted Student was not wearing her glasses. Student sat near the teacher and the projection screen. During the group math lesson, Student followed along, remained seated, raised her hand, and answered a question. Hidalgo observed Student fidgeting with her hands during the lesson. When the class transitioned to another lesson, Student complied and went right to work. The teacher prompted Student to put on her glasses because Student was putting her face about four inches from the computer screen. During this lesson, Student got up from her seat several times to ask the teacher questions. Classmates also left their seats to ask questions. Overall, Student interacted positively with peers and teacher. She followed instructions and complied with prompts. Although Student fidgeted in her seat, and went off task during the computer lesson, she quickly returned to task both independently and with prompts.

Hidalgo interviewed Student. Student reported she enjoyed school and had tons of friends. Student stated she was happy, but sometimes sad when her younger sibling "gets whatever he wants."

Parent completed an interview questionnaire. Parent reported Student as very social, smart, and kind. Parent reported weaknesses in the areas of (1) attention, completing tasks, independently initiating tasks, and following through; (2) writing skills, spelling, and inverting numbers and letters; and (3) a delayed response in actions.

Parent expressed concerns in all academic areas. Parent reported Student did not do her homework or complete classwork. Student struggled to pay attention and scored poorly on tests. Parent believed Student was very smart and capable of doing her work but struggled to stay on task.

Parent expressed concerns that Student shut down when under stress and would not comply with demands or answer questions. Parent noted anxiety and depression ran in the family.

Although Dr. Mancillas ruled out a diagnosis of autism, Parent maintained a concern regarding autism, as Student had a sibling on the spectrum. Parent opined her belief that autism was very different in girls, and there might be a delay in diagnosis as girls seem to mask symptoms until their teens.

COGNITIVE TESTING

Hidalgo selected cognitive testing to compare Student's learning ability with similarly aged peers. Ramirez administered the Wechsler Intelligence Scale for Children, fifth edition, referred to as Wechsler, an individually administered and comprehensive clinical instrument. The Wechsler assessed Student's intelligence in specified cognitive indexes including

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

The Wechsler also generated a full-scale intelligence quotient, referred to as IQ, composite score that represented Student's general intellectual ability. Student's full IQ measured within the average range.

Ramirez administered the verbal comprehension index subtest which measured Student's ability to

- access and acquire work knowledge,
- reason verbally,
- solve verbal problems,
- retrieve information, and
- communicate knowledge effectively.

Student scored within the high average range. On the visual spatial index, which measured Student's ability to evaluate visual details and to understand visual spatial relationships, Student scored within the high average range. On the fluid reasoning index, which measured Student's ability to detect the underlying conceptual relationship among visual objects and use reasoning to identify and apply rules, Student scored within the average range.

Ramirez administered the working memory index, which measured Student's ability to register, through attention, auditory and visual discrimination, and concentration, maintain, and manipulate visual and auditory information in conscious awareness. In combination, these skills were used to identify and maintain visual and auditory information in temporary storage and resequencing it for use in problem-solving. Student scored within the average range on this index.

Ramirez administered the processing speed index to measure Student's speed and accuracy of visual identification, decision-making, and decision implementation. Student's performance in this area related to

- visual scanning,
- visual discrimination,
- short-term visual memory,
- visual-motor coordination, concentration, and
- basic clerical skills.

Student scored within the average range on this index.

Hidalgo selected assessment tools to measure Student's basic psychological processes in the areas of

- attention,
- visual processing,
- auditory processing,
- sensory-motor skills,
- phonological processing, and
- cognitive abilities, including association, conceptualization, and expression.

Ramirez administered the Test of Auditory Processing Skills, fourth edition, to measure Student's auditory skills necessary for the development, use and understanding commonly utilized in academics and everyday activities. Ramirez utilized the phonological processing index, comprised of basic phonemic skills, which measured Student's ability to discriminate between sounds within words, segment words into morphemes, and blend phonemes into words. The auditory memory index measured

Student's ability to store, recall and manipulate auditory information, including sequencing. The listening comprehension index measured Student's ability to understand auditory information and make inferences, deductions, and abstractions of the meaning of the information. Ramirez utilized the processing oral directions subtest and the auditory comprehension subtests, which utilized skills similar to those used during reading and listening comprehension. The results of the Test of Auditory Processing Skills, placed Student's auditory processing skills within the high-average range.

Hidalgo selected the Berry-Buktenica Developmental Test of Visual-Motor Integration, sixth edition, assessment which Ramirez administered. The Berry-Buktenica consisted of three workbooks which Student completed systematically. The visual perception and motor coordination tests were both timed and had to be completed within specific time limits to be valid. Student timely completed the tests and scored within the average range on all three tests.

Hidalgo selected the Wide Range Assessment of Memory and Learning-2, which measured Student's memory ability within three indices and a general memory index. Ramirez administered this assessment. The verbal memory index measured Student's capabilities on rote memory tasks and comparing that performance with tasks that increased within semantic complexity. Student scored within the high average range. The visual memory index measured Student's memory, using stimuli assimilated visually. Student scored within the average range. The attention/concentration index consisted of two subtests which evaluated Student's visual and auditory attentional capacity or short-term rote memory. Student scored within the average range. Overall, Student scored within the average range on the general memory index.

Hidalgo selected the Comprehensive Test of Phonological Processing, second edition, to assess Student's phonological abilities. Ramirez administered this assessment which provided three composite scores in the areas of phonological awareness, phonological memory, and rapid naming, all of which are necessary components of successful reading. Hidalgo selected this test for an in-depth analysis of Parent's concerns regarding dyslexia.

Student scored within the above average range on the phonological awareness composite which indicated Student was aware of distinct phonemes within words and did not have difficulty manipulating phonemes.

The phonological memory composite assessed Student's ability to code information phonologically for temporary storage in working or short-term memory. A deficit in this area would impair decoding of new words and listening and reading comprehension of complex sentences. Student scored within the average range.

The rapid symbolic naming composite measured speed and accuracy identifying digits and letters representing Student's ability to efficiently retrieve phonological information from long-term memory and to execute a sequence of operations quickly and repeatedly. A low score in this area would indicate a deficit in decoding and reading fluency. Student scored within the average range. However, on the rapid non-symbolic composite, which rapidly identified colors and objects, Student scored in the below average range. Considered together however, Student scored overall within the average range, ruling out dyslexia as an area of need.

SOCIAL EMOTIONAL AND ADAPTIVE BEHAVIOR ASSESSMENTS

Hidalgo selected the Autism Spectrum Rating Scales, a questionnaire given to Parent and Student's teacher, Brown, to assess autism spectrum symptom at home and at school. The questionnaires contained 71 items with three autism spectrum scales, an overall Diagnostic and Statistical Manual of Mental Disorders-V, called a DSM-V scale, and eight treatment scales.

The social/communication scale indicated the extent to which Student used verbal and non-verbal communication appropriately to initiate, engage in, and maintain social contact. Both Parent and teacher rated Student within the average range.

The unusual behaviors scale, rated Student's level of tolerance for changes in routine, engagement in apparently purposeless and stereotypical behaviors, and overreaction to sensory experience. Parent rated Student within the slightly elevated level, while teacher rated Student as average.

On the self-regulation scale, which indicated how well Student controlled her behavior and thoughts, maintained focus, and resisted distraction, teacher rated Student within the slightly elevated range, while Parent found Student within the elevated range.

Ratings on the DSM-V scale indicated how closely Student's behavioral characteristics were similar to the behaviors of children diagnosed with an autism spectrum disorder. Student's behaviors did not match the DSM-V scale criteria for autism spectrum disorder. This result was consistent with Dr. Mancillas' prior findings.

Hidalgo selected the Conners Rating Scale, third edition, as an assessment tool to obtain observations of Student's behavior from multiple perspectives. Specifically, the

Conners long form was designed to assess attention deficit hyperactivity disorder and its most common comorbid problems. Based upon the responses of both Parent and teacher, Student demonstrated noticeable amounts of attention deficit hyperactivity disorder behaviors which limited Student's academic and social interactions, making it likely Student had attention deficit hyperactivity disorder.

Hidalgo selected the Behavior Assessment System for Children, third edition. This assessment consisted of an integrated system of ratings and observations of Student's behavior, emotions, self-perceptions, and history and through a systematic evaluation of Student, Parent, and teacher perceptions of Student's emotional and social functioning at home and at school.

Parent reported Student within the at-risk range in far more areas than the teacher. Teacher however, found Student within the clinically significant range on the learning problems subscale and the student problem index. Both Parent and teacher described Student's problems in the area of attention within the at-risk range. Although the at-risk range qualified as a significant problem, it was not measured as severe enough to require formal treatment. It did, however, identify a problem area requiring careful monitoring.

Parent challenged the validity of the psychoeducation assessments at hearing and in her closing brief. Parent argued Hidalgo failed to administer complete assessments, which broke the testing protocol and rendered the assessment results invalid. Parent claimed that by handpicking selected subtests, Charter Oak Unified failed to explore areas of concern in more than a cursory manner and ignored the actual evidence of Student's disabilities exhibited in her grades and classroom work product.

Parent's claims are unfounded. Hidalgo and the other assessors testified that some assessments, such as the Woodcock Johnson, did not require administration of the entire assessment in areas not considered a suspected disability. Manufacturer instructions indicated when an assessment tool may be bifurcated. Each assessor testified they followed the manufacturer's instruction for each assessment tool utilized, and each testified Student's resulting scores were valid in the areas tested.

ACADEMIC ACHIEVEMENT

Charter Oak Unified proved its academic assessment of Student was appropriate. Karen Klink, a retired education specialist, administered the Woodcock Johnson-IV, Tests of Achievement, a norm-referenced test which measures academic achievement. Klink administered the Woodcock Johnson to determine Student's academic strengths and weaknesses. Charter Oak Unified contracted with Klink, to assist the district with completing assessments within statutory timelines. Although no specific credential was required to administer the Woodcock Johnson, Klink was a credentialed education specialist, with both multi-subject and special education credentials.

Klink testified at hearing to address detailed questions raised by Parent regarding the administration of the assessment and Student's test protocols. Klink was highly knowledgeable about the Woodcock Johnson and provided a clear explanation of her assessment and scoring procedures. Her testimony was credible and persuasive.

Klink described Student as a typical first grader, with typical attention to tasks. Student did not have her glasses during the assessment, however, Klink persuasively opined this did not affect Student's testing because Student's scores would have been lower than average if impaired.

Parent expressed concerns that there were blanks in Student's test protocols and Klink did not administer the entire assessment tool. However, Klink credibly explained that some questions were not asked pursuant to the test manual instructions, and administration of the entire assessment tool was not necessary to guarantee validity.

Further, Klink acknowledged miscalculations on a few of the subtests. However, Klink persuasively opined that these errors did not affect Student's overall results because the correct calculations resulted in higher, not lower scores. Klink also persuasively opined the Woodcock Johnson was a valid assessment tool and that Student's results were an accurate picture of her academic abilities.

In general reading, Student performed overall within the high average range when compared to her peers. In written language, Student performed within the average range. Student's broad math performance fell within the average range.

Klink administered the Woodcock Johnson-IV Tests of Oral Language, which assessed oral language, oral expression and listening comprehension. Student's oral language skills were typical for her age.

David Avila, a Charter Oak Unified education specialist, scored Student's responses on the Woodcock Johnson pursuant to the manual and rubrics provided by the test manufacturer. Although Klink administered the assessment, Avila scored the assessment because he was the Charter Oak Unified education specialist ultimately responsible for the academic achievement portion of the multidisciplinary assessment. Avila, a special education teacher, held

- a bachelor's degree in psychology and social behavior,
- a master's degree for pupil personnel services,

- an administrative services credential, and
- an education specialist instruction credential.

Avila was experienced administering the Woodcock Johnson and trained in scoring the assessment. Both Klink and Avila persuasively opined the Woodcock Johnson was properly administered and scored, and Student's assessment scores were valid. Avila reviewed Student's assessment protocols and response booklet and did not see any red flags in the assessment protocols. His grading pursuant to the testing rubrics, placed Student within the average to high average range.

Sheri Brown, Student's first grade teacher, completed a form interview to provide additional information as part of the academic achievement assessment. Brown held a multiple subject teaching credential and taught elementary school for 28 years. Her responses in the interview noted Student was kind and polite, with excellent behavior in class. Brown noted that when working independently, Student was easily distracted, had a hard time staying focused, and difficulty completing her assignments. Student struggled with organization and often needed more time to complete assignments. Student required redirection when distracted. These comments were confirmed in the various ratings scales completed by Brown.

Student's first grade report card and teacher comments were included in the academic achievement assessment. Student's difficulties with spelling, writing, and math were noted, as were Student's difficulties with focus and distraction.

Brown testified at hearing. Student's iReady testing indicated Student was below grade in writing content and spelling, but Student continued to make progress. Student's distractibility affected her performance, but this was accommodated in class, and overall Student performed at grade level. Brown opined Student's areas of need

were standard areas worked on during the first grade. Learning was still developmental for all first graders. Writing was also developmental in the first grade. Transposing numbers and letters were common and not an area of concern in first grade. Student's writing samples in her daily journal were age and grade appropriate.

SPEECH AND LANGUAGE ASSESSMENT

Charter Oak Unified proved its speech and language assessment was appropriate. Celine Chien, a speech and language pathologist, administered Student's speech and language assessment and testified at hearing. Chien held a master's degree in speech and language pathology, and a speech and language services preliminary credential which authorized her to conduct speech and language assessments and provide speech and language services. Chien was not a Charter Oak Unified employee but assessed Student pursuant to a contract with the school district.

Chien observed Student during the assessment. Student was polite and cooperative and enjoyed chatting with Chien. Chien provided Student with breaks throughout the assessment. Chien considered the testing results valid for Student.

Chien conducted an informal peripheral examination or visual inspection of Student's face and mouth and determined those mechanisms were adequate for speech production.

Chien evaluated Student's articulation by administering the Arizona Articulation and Phonology Scale, fourth edition, a standardized test which tested Student's articulation skills in the areas of word articulation, sentence articulation, and phonology. Student produced all speech sounds correctly at the sentence and conversational levels. Student scored within the average range.

Chien informally assessed Student's voice through observation, found it normal, and determined voice was not an area of concern. Chien also informally observed Student's fluency throughout the assessment and found no dysfluencies. Student's fluency was within the normal range.

Chien administered the Oral and Written Language Scales-2, a formal assessment of Student's receptive and expressive language. Chien utilized the assessment to determine broad levels of language skills as well as Student's specific performance in the areas of listening, speaking, and writing. One subtest targeted Student's listening comprehension through oral language reception, listening, and comprehending spoken language. A second subtest targeted Student's oral language expression or speaking. The third subtest, an oral language composite, consisted of a composite of Student's overall language abilities. Chien scored assessment pursuant to test instructions and scoring manual. Student's overall language skills were within the average range.

Chien utilized the Social Language Development Test-Elementary, to assess Student's pragmatic language skills. This assessment was a norm-referenced language assessment, which provided information about Student's social language abilities in the areas of making inferences, interpersonal negotiation, multiple interpretations, and supporting peers. Student's scores placed her social language skills within the normal range. Notably, Student scored above average in the supporting peers subtest. Chien observed Student on the playground during recess and noted Student sitting with peers, initiating conversation, sharing snacks, and participating in conversations. Based upon the assessment results, and observation, Chien determined pragmatic language was not an area of concern.

The speech and language assessment covered social language and pragmatics. Student appropriately used social language, exhibited average pragmatics skills, socially interacted with peers, and participated in group conversations.

Parent argued Chien inappropriately stopped assessing Student when she found no concerns in Student's basic speech and language skills. This contention was unpersuasive. Chien's testimony was credible, and the assessment results valid. Chien assessed Student in all areas of suspected disability related to the area of speech and language, including social language to address concerns regarding autism. Student did not exhibit deficits in speech and language. Charter Oak Unified was not required to conduct an exhaustive search for any possible abstract or non-identified weakness. Once Chien determined speech and language was not an area of concern, she was not required to continue to assess.

OCCUPATIONAL THERAPY ASSESSMENT

Charter Oak Unified proved its occupational therapy assessment was appropriate. Purvi Shah, a licensed occupational therapist, assessed Student in the area of occupational therapy. Shah held a bachelor's degree in occupational therapy and was certified and licensed to practice occupational therapy in California. Shah, an occupational therapist for 22 years, has worked for Charter Oak Unified since 2008, and conducted over 50 occupational therapy assessments each year. Shah presented as a credible witness. Based upon the suspected areas of disability and areas of Parent's concerns, Shah assessed Student in the areas of fine motor, visual motor, sensory processing, and organization of behavior skills. Student was compliant, eager to please

and agreeable throughout the assessment process. She completed all tasks presented to her with good attention. Student followed directions appropriately on standardized testing. Shah considered the assessment results a valid representation of Student's skills.

Shah administered the Bruininks-Oseretsky Test of Motor Proficiency, second edition, a standardized test that measured different areas of motor skill development. Subtests were selected based upon the areas of suspected concern. Shah administered the fine motor integration subtest which required Student to use precise control of finger and hand movements; the fine motor integration subtest which required Student to copy a range of shapes, necessitating coordination and integration of visual and motor skills. Student scored within the average range on each of these subtests.

Shah administered the Wide Range Assessment of Visual Motor Skills designed to assess three important aspects of visual-motor functioning. The drawing subtest measured integrated visual-motor ability; the matching subtest measured visual-spatial ability; and the pegboard subtest measured fine motor ability. The tests could be appropriately administered together or singularly. Shah followed the standardized directions and considered the assessment results to be valid and an accurate representation of Student's skills.

On the visual-motor and visual-spatial subtests, Student scored within the high and above average ranges.

Shah conducted a clinical observation during the functional assessment of Student's fine motor skills, which required precise control of finger and hand movements, for things such as drawing, cutting, folding paper, and completing mazes. Student's foundational skills, grasp of tools, grasp of objects, in-hand manipulation and bilateral hand usage were all within functional limits.

Student displayed developmentally appropriate fine-visual motor skills in the areas of prewriting, handwriting, cutting, and self-care.

Shah noted minor concerns regarding Student's ability to copy from both close and far visual models. A close visual model seemed to improve the legibility of Student's writing. Student's teacher had no concerns regarding Student's fine and visual motor skills, but reported Student was slow in completing classroom tasks. Overall, Student demonstrated adequate fine and visual motor skills required to participate in the educational setting.

Shah assessed Student's sensory processing and organization of behavior to measure Student's processing and perception of sensory information and address Student's activity level, attention, persistence, and purposefulness in play and task performance. Due to concerns regarding Student's sensory processing skills, Shah utilized the Sensory Processing Measure, an integrated system of rating scales. Shah noted the Sensory Processing Measure was a tool, which should only be considered in conjunction with other relevant information such as observations, interviews, and medical records. Shah used the main classroom form to obtain information regarding Student's sensory processing in the educational setting. The information gathered indicated Student scored primarily within the typical range. The scale reporters placed

Student in the “some problems” areas in vision, and planning and ideas, however Shah determined these weaknesses were expected in children with attention deficit hyperactivity disorder.

MULTIDISCIPLINARY ASSESSMENT REPORT AND IEP TEAM MEETING

A child qualifies for special education if the assessments demonstrate that the degree of the child’s impairment requires special education. (Ed. Code, § 56327, subd. (a) and (b); Cal. Code Regs., tit. 5, § 3030(a).) It is the duty of the IEP team, not the assessor, to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§ 300.305(a)(iii)(A), 300.306(a)(1).) To aid the IEP team in determining eligibility, the personnel who assess a student must prepare a written report explaining the results of the assessment. The report must be given to the parent or guardian after the assessment, though that duty has no fixed time limit. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

The multidisciplinary assessment report was timely and complied with statutory requirements. Hidalgo produced a written report of her assessment, detailing the basis of her findings and her analysis of Student’s suspected disabilities and areas of educational need and reviewed her report with the IEP team on April 26, 2022. (Ed. Code, § 56327, subds. (a), (b).)

The report included detailed information about Student’s educational and health history, input from Parent, Dr. Mancillas’ 2021 private assessment results, and a summary of Student’s psychological, educational, and behavioral abilities. The report also included the results from the various informal and standardized tests, and the assessors’ behavioral observations, both during testing and in the classroom.

The report included an analysis of whether Student met eligibility for special education and related services under the categories of

- autism,
- emotional disturbance,
- intellectual disability,
- other health impairment specific learning disability, and
- speech and language impairment.

(Cal. Code Regs., tit. 5, § 3030, subds. (a) and (b).) The report identified the legal eligibility criteria for each category. (*Id.*) Hidalgo concluded Student exhibited behaviors consistent with attention deficit hyperactivity disorder but that the behaviors were not significant enough to warrant special education services. Similarly, each of the other assessors determined Student did not exhibit significant weaknesses nor did their assessment results indicate any additional areas of suspected need which required additional assessment. The report indicated that Student's IEP team would make the final determination regarding eligibility.

Charter Oak Unified held an IEP team meeting on April 26, 2022, which comported with the 60 day timeline which commenced on February 28, 2022. The IEP team discussed each component of the multidisciplinary assessment report at this meeting. Hidalgo, Virata, Avila, Chien, and Shah, attended the IEP team meeting, and each presented their assessment results. Parent attended the meeting and had the opportunity to ask questions about the assessments and Student's eligibility for special education.

As evidenced above, Charter Oak Unified established it used a variety of valid instruments to evaluate Student's intellectual development, social emotional, behavior, academic achievement, motor development, and speech and language skills, which included testing to identify autism, attention deficit hyperactivity disorder, dyslexia, and various sensory issues. (34 C.F.R. § 300.304(b)(1), (3); Ed. Code, § 56320, subd. (b)(3).) Charter Oak Unified administered the assessments in accordance with the test producer's instructions and protocols. (Ed. Code, § 56320, subd. (b)(3).) Charter Oak Unified established the assessments produced reliable and valid information for Student's educational and behavioral needs. (34 C.F.R. § 300.304(b)(3); Ed. Code, § 56320, subd. (b)(1).) As a result, Charter Oak Unified proved its assessments in these areas were appropriate and met all legal requirements.

CONCLUSIONS AND PREVAILING PARTY

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

ISSUE:

Charter Oak Unified School District's April 26, 2022 multidisciplinary assessment was appropriate such that it is not required to fund an independent educational evaluation at public expense, in the areas of

- health,
- psychoeducation,
- academics,

- speech and language, and
- occupational therapy.

Charter Oak Unified School District prevailed on the sole issue in this matter.

ORDER

1. Charter Oak Unified School District's April 26, 2022 multidisciplinary assessment was appropriate.
2. Charter Oak Unified School District is not required to provide Student an independent educational evaluation at public expense in the areas of health, psychoeducation, academics, speech and language, and occupational therapy.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Judith Pasewark
Administrative Law Judge
Office of Administrative Hearings