

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2020020348

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LOS ANGELES UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

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DECISION

SEPTEMBER 28, 2020

On February 10, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Los Angeles Unified School District, naming Student. OAH granted Student's request for a continuance for good cause on February 21, 2020.

Administrative Law Judge Judith L. Pasewark heard this matter via video conferencing on August 19, 2020. The Administrative Law Judge is called the ALJ.

Attorney Mary Kellogg represented Los Angeles Unified. Andrew Vazquez, Los Angeles Unified representative, attended all days of hearing on Los Angeles

Unified's behalf. Gina Arreguin, Spanish language interpreter, was present to interpret for Parents. On August 19, 2020, when Parents failed to log-in to the video conference by computer or telephone, the ALJ made two telephone calls to Parents at the number provided by Parents. On each call, the ALJ was referred to Parents' voicemail. The ALJ left a voicemail message, interpreted into Spanish by the interpreter, regarding the hearing taking place, and delayed the hearing for 20 minutes. OAH received no further contact from Parents. The due process hearing proceeded without Parents present.

OAH continued the matter to August 31, 2020, for Los Angeles Unified's written closing brief. The record was closed, and the matter was submitted on August 31, 2020.

## ISSUE

1. Was Los Angeles Unified's September 18, 2019 psychoeducational assessment appropriate?

## 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 et seq. (2006) (all references to the Code of Federal Regulations are to the 2006 version); 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 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).) In this case, Los Angeles Unified requested the hearing and bears 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 resided with his parents within the boundaries of Los Angeles Unified at all relevant times. At the time the September 2019 psychoeducational evaluation, Student was a 10-year old fifth grader attending 95th Street Elementary School. Student qualified for special education and related services under category of other health impairment.

Los Angeles Unified held an individualized education program, or IEP, team meeting on September 20, 2019, for a three-year review of Student's IEP. At the IEP team meeting, Los Angeles Unified discussed its psychoeducational assessment of Student, documented in a report dated September 18, 2019.

After the meeting, Los Angeles Unified provided Parents a Spanish translation of the IEP document. Parents consented to the IEP on December 20, 2019, but wrote on the IEP document in Spanish that they requested an independent psychoeducational evaluation. On January 30, 2020, Los Angeles Unified provided Parents prior written notice denying Parents' request.

## ISSUE 1: WAS LOS ANGELES UNIFIED'S SEPTEMBER 2019 PSYCHOEDUCATIONAL ASSESSMENT APPROPRIATE?

Los Angeles Unified contends its September 18, 2019 psychoeducational evaluation was appropriate because it met the requirements of state and federal special education law. Los Angeles Unified requests an order that because the psychoeducational evaluation was appropriate, it is not required to fund an independent educational evaluation.

Student did not give Los Angeles Unified a reason for requesting an independent psychoeducational evaluation, on the September 20, 2019 IEP or at any other time.

A reassessment of the pupil must be conducted if the local educational agency determines that the educational or related service needs, including improved academic and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teachers request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code., § 56381 subd. (a)(1).) A reassessment must occur not more frequently than once a year, but at least once every three years, unless the parent and the local educational agency agree otherwise. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code § 56381, subd. (a)(2).)

Under certain conditions, a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R.

§ 300.502(a)(1); Ed. Code, § 56329, subd. (b) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

## PRELIMINARY REQUIREMENTS

### Assessment Plan

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student's parent. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) A plan for reassessment must comply with the same requirements as an assessment plan for an initial assessment. (Ed. Code, § 56381, subd. (e).)

The notice consists of the proposed written assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion State law. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The assessment plan must be in language easily understood by the general public, and provided in the native language of the parent. It must explain the types of assessments the district proposes to conduct, and state that an IEP will not result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4); see also 34 C.F.R. § 300.304(a).)

In addition, the proposed assessment plan must include a description of any recent assessments conducted, including available independent assessments. It must include any assessment information the parent requests to be considered, and information indicating the pupil's primary language and the pupil's language proficiency in the primary language. (Cal. Code Regs., tit. 5, § 3022.)

The assessment plan must be accompanied by notice that advises parents that an IEP team meeting will be scheduled to discuss the assessment results and recommendations. (Ed. Code § 56329, subd. (a)(1).) The notice must also explain limitations on eligibility for special education and related services, and that parents will receive a copy of the assessment report and documentation of the determination of eligibility. (Ed. Code, § 56329, subds. (a)(2), (3).) It must state that a parent has the right to obtain, at public expense, an independent educational assessment under certain circumstances, and explain the procedure for requesting such an assessment. (Ed. Code, § 56329, subd. (b).) It must explain the due process hearing procedure that a school district may initiate to defend against a request for an independent assessment at public expense, and the rights of a school district to observe a student in a proposed publicly financed nonpublic school placement. (Ed. Code, § 56329, subds. (c), (d).)

The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

An IEP team meeting to review the assessment must take place within a total time not to exceed 60 days, not counting days between the student's regular school sessions, terms, or days of school vacations in excess of five school days, from the date of receipt of the parent's written consent for assessment, unless the parent agrees to an extension in writing. (Ed. Code, § 56344, subd. (a).)

On August 14, 2019, Los Angeles Unified provided Parents with a Special Education Assessment Notification and Assessment Plan. The notification and assessment plan were provided to Parents in both English and Spanish. The notification informed Parents that the triennial reassessment required gathering of information in all areas of suspected disability, and might include review of school records, reports, prior assessments, information provided by parents, observations, interviews, and

standardized test results. The notice further indicated that a reassessment report would be generated and an IEP team meeting held within sixty days of parental consent to assessments to review and discuss the findings of the reassessment. The assessment plan listed each area to be assessed, and the reason for each assessment. The assessment plan included a description of the type of assessments Los Angeles Unified proposed to administer, and that assessments would be conducted in Student's primary language. A copy of Procedural Rights and Safeguards was provided with the assessment plan.

Parents consented to the reassessment plan on August 23, 2019, and Los Angeles Unified held Student's triennial IEP team meeting on September 18, 2019, to review and discuss the triennial reassessments. Los Angeles Unified complied with the statutory requirements of notice and consent for assessment.

#### TIMELINESS

There is no set time for a public agency to respond to a parent's request for an independent educational evaluation, however the school district must act "without unreasonable delay." (34 C.F.R. § 300.502 (b)(2).)

Parents requested an independent psychoeducational assessment shortly before the winter school break on December 20, 2019. On January 30, 2020, Los Angeles Unified provided prior written notice to Parents denying their request for an independent evaluation, and on February 10, 2020, Los Angeles Unified filed this request for due process hearing. Parents' December 20, 2019 request for the independent evaluation consisted of one sentence contained on their consent to the September 18, 2019 IEP, and provided no reason for the request. Parents made the request shortly before Los Angeles Unified closed for the 2019 winter break. Upon return from winter

break in January 2020, Los Angeles Unified provided Parents with prior written notice and filed this complaint, all within approximately one month. California special education law contains provisions that allow similar timelines to be suspended when school is not in session. (see Ed. Code, § 56053, subd. (a).) Given the winter break, when appropriate staff was unavailable to explore and consider Parent's request for the independent assessment, the time in which Los Angeles Unified responded and filed this complaint was reasonable. (*J.P. ex rel., E.P. v. Ripon Unified School District* (E.D. Cal. April 15, 2009, No. 2:07-cv-02084-MCE-DAD.) 2009 WL 1094933.) Los Angeles Unified filed this complaint without unnecessary delay.

## STATUTORY REQUIREMENTS FOR PSYCHOEDUCATIONAL REASSESSMENT

In conducting an assessment, a school district must follow statutory guidelines that prescribe both the content of the assessment and the qualifications of the assessor or assessors. The 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).) It 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 also 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 district personnel must administer special education assessments, 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).)

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. (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) The assessor must be competent in the student's primary language or mode of communication, and have knowledge and understanding of the cultural and ethnic background of the student. (Cal. Code Regs., tit. 5, § 3023, subd. (a).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School Dist.* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where concern prompting assessment was a deficit in reading skills].) 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).)

In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) An educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

Persons who conduct assessments must prepare a written report, as appropriate, of the results of each assessment. (Ed. Code, § 56327.) The report must 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 effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment.

The report must be provided to the parent regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

## COGNITIVE REASSESSMENT

Beatriz Rodriguez, Los Angeles Unified school psychologist conducted Student's psychoeducational reassessment. Rodriguez held bachelor's degrees in psychology and child development, a master's degree in counseling-school psychology, and a pupil personnel credential in school psychology. Los Angeles Unified employed Rodriguez as a credentialed school psychologist for the last seven years. She conducted approximately 40 psychoeducational assessments per year. Rodriguez was familiar with Student, and had provided related counseling services for him. Rodriguez was bilingual in English and Spanish, and utilized assessment tools in Spanish where needed. Rodriguez qualified as a credentialed school psychologist, with extensive experience in conducting school-based psychoeducational assessments. Rodriguez answered

questions directly, without reservation, and exhibited a strong recollection of the events she testified about, establishing her credibility as a witness.

Rodriguez obtained Student's background information through an educational records review, interviews with Parents and teachers, and a parent questionnaire in Spanish. Parents participated in the assessment process in Spanish.

Review of Student's academic records reported a history of difficulty in reading, writing and math. Standardized classroom reflected that Student failed to meet standard skills in English language arts and math. Student's academic achievement remained below grade level expectations through the fourth grade.

Rodriguez reviewed Student's 2014 psychoeducational assessment which reported Student presented with high average cognitive ability, but had difficulty manipulating word parts, blending sounds into words, and maintaining appropriate attention, focus, effort and motivation. Stereotypical behaviors associated with autism were observed, along with observation of behaviors demonstrating extreme resistance to non-preferred activities. In 2014, Los Angeles Unified considered special education eligibility for autism, specific learning disability and other health impairment.

Rodriguez reviewed a 2015 independent psychoeducational evaluation conducted by Adrianna Anaya, Psy.D. Although Student presented with some characteristics associated with autism spectrum disorder, Dr. Anaya reported the behaviors were better explained as a behavioral and emotional presentation of his attention and executive functioning deficits. Dr. Anaya reported that a primary eligibility of autism did not accurately reflect Student's then current functioning. Dr. Anaya concluded Student's eligibility should be changed to other health impairment due to significant deficits consistent with attention deficit disorder, combined type.

Based upon her review of available information, Rodriguez determined Student unique needs required consideration for special education eligibility in the categories of autism, specific learning disability and other health impairment.

Prior to cognitive testing, Rodriguez tested Student's language skills to ensure that he was tested in the language he understood and used best. For an English language learner such as Student, Rodriguez administered a test to determine Student's English proficiency level, in the areas of listening, speaking, reading and writing. Rodriguez also administered a standardized test to measure Student's receptive and expressive language in both English and Spanish. Assessment results indicated Student possessed stronger academic oral language skills in English, suggesting English was his dominant language. Student had significant difficulty understanding questions in Spanish. Therefore, Rodriguez administered the remainder of Student's portions of the psychoeducational reassessment in English.

Parents participated in the collection of data through the parent questionnaire, a telephone interview with Parent, and through assessment ratings scales provided to Parents in Spanish. Parents expressed their concern with Student's academic progress, but provided little information to suggest social-emotional or behavioral problems in the home.

Rodriguez administered the tests in short sessions over a four-day period due to Student's short attention span. He was accompanied to each testing session by his behavior interventionist aide, who waited outside the testing room. Student followed directions, and appeared motivated, but was easily distracted and fidgeted in his seat. Student was redirected easily with verbal prompts. Student exhibited impulsive behaviors while answering test items and in completing paper and pencil tasks.

During the assessments, Student initiated and maintained conversations based on his own interests. When not interested in a topic or sustaining a conversation, Student gave short responses or changed the conversation. He fidgeted with a book and toys during breaks. Student spoke clearly and in complete sentences but required verbal reminders to take his time while speaking.

In conducting the psychoeducational re-assessment, Rodriguez used materials and procedures which were selected and administered so as not to be racially, culturally or sexually discriminatory. She considered the assessment tools to be valid and reliable. She did not find Student's performance impaired. Student exhibited the ability to complete the assessment and did his best on each test. Rodriguez reported assessment results reflected Student's true abilities and Student performed consistently across all measures.

Rodriguez assessed Student's general ability and cognitive functioning using several standardized assessments. One measured Student's cognitive processes deemed to be the basic building blocks of intellectual functioning, in the areas of planning, attention, and presentation of oral and verbal information. She administered three supplemental composites of this test in the areas of executive functioning, working memory and executive functioning with working memory.

Rodriguez used another test to measure Student's phonological and auditory processing skills. This assessment utilized a variety of tasks. She used the phonological awareness assessment to identify deficits likely to impair Student's ability to develop foundational reading skills, such as listening and reading comprehension. Rapid symbolic and on-symbolic naming measures identified deficits associated with reading fluency. Rodriguez administered standardized tests to measure Student's visual processing skills, visual perception, hand-eye coordination and fine motor coordination.

As a result of these cognitive assessments, Rodriguez determined Student functioned within the average range of cognitive ability. Student's cognitive processing skills in conceptualization, expression, and association fell within the average range. His visual processing skills, auditory processing skills, and phonological processing skills fell within the average range. Student possessed the ability to interpret and synthesize information presented orally and visually. He manipulated phonemes within words and blended sounds in order to form words.

Student's attention processing skills fell in the below average range. Student had difficulty utilizing effective strategies to complete timed tasks, and had difficulty on items that required sustained attention. Student performed below average on visual-motor integration tasks, suggesting difficulty copying information from a model or board. Student could write adequately and form letters and numbers, which ruled out a sensory-motor integration deficit.

Based upon responses to the teacher questionnaires, Student's fine motor skills were adequate. He did not exhibit any difficulty writing legibly, copying from the board, holding a pencil, or cutting with scissors. Rodriguez attributed Student's below average scores on the visual motor integration test to his lack of attention to detail. Based upon the review of records and work samples, and input from teachers, Rodriguez determined Student did not present with any underlying motoric or sensory needs that impacted his access to his educational environment. Student's gross motor skills were observed as a strength. Student walked without difficulty and navigated the educational environment without difficulty. Parents did not report any concerns regarding Student's fine or gross motor skills.

Rodriguez observed Student in his general education classroom on two occasions to observe Student's behavior, where he sat in a cluster group with four other children. During the reading activity, Student appeared only to be looking at pictures, and not reading the sentences. He was not disruptive in class, and appropriately interacted with a peer who came to his desk to return a book. When the teacher instructed the class to put away their books and line up for lunch, Student followed her instructions. On the second occasion, during a reading activity, again in reading clusters, the class was instructed to read silently for 15 minutes and then write one paragraph about what they had read. Student's behavior interventionist aide was not in the classroom. Although facing the teacher, Student did not appear to be attentive and detached when the teacher spoke. Student copied the other children, took out his book, and appeared to read silently. Student appropriately sought additional instruction from the teacher, and continued to work on the assignment, although he skipped steps by immediately writing, instead of taking notes first. After twelve minutes of working on the assignment, Student began to fidget in his seat. Having forgotten some of the assignment instructions, he asked the teacher for clarification about the assignment. He then completed the assignment and placed his book and notebook on his desk. He then fidgeted in his seat until it was time for recess. Rodriguez observed Student during unstructured time in the cafeteria and playground during lunch. Student sat at the end of a table with his classmates. He ate his lunch quickly and did not engage in conversation with his peers. Instead, Student appeared to stare out into space waiting to be dismissed to the recess yard. Student did not pay attention to dismissal directions, and needed redirection from his aide. In the recess yard, Student stayed close to his aide, often unaware he was too close and violating her personal space. Student was not interested in interacting with peers unless initiated by his aide. Even then, he interacted for only a few minutes, then returning to his solitude.

Rodriguez determined Student presented with significant attention difficulties. He was easily distracted, had difficulty sustaining his attention, had difficulty initiating and completing assignments, and needed frequent prompting to stay on task. Student also exhibited challenges in social communication, and presented with behavior rigidity. Student did not present with age appropriate interpersonal communication skills. At times he spoke quickly and his sentences became fragmented. Student used shorter and simpler sentences than his peers, and exhibited some challenges with articulation. He needed more practice with vocabulary. Student also experienced difficulty with inferential comprehension. His previous teacher concurred and reported Student could sustain conversations, but kept his interactions short and minimal. Based upon the teacher reports, concerns were noted in social communication. Rodriguez noted the assessment results and teacher reports indicated autistic-like characteristics in the school setting, however she emphasized that Parents did not see those behaviors at home. Based upon these conclusions, Rodriguez determined Student evidenced social, emotional and behavioral needs which adversely impacted his educational access and performance.

In conducting the psychoeducational reassessment, Rodriguez used materials and procedures that were sufficiently comprehensive and tailored to evaluate specific areas of need, including autism, specific learning disability, attention and behavior. The assessment tools were selected and administered so as not to be racially, culturally or sexually discriminatory. She used a variety of assessment tools and strategies which were valid and reliable. Student's performance was not impaired. Student exhibited the ability to complete the assessment, and did his best on each test. The assessment results reflected Student's true abilities and Student performed consistently across all measures.

Rodriguez concluded Student evidenced a psychological processing deficit in the area of attention processing which adversely impacted his educational access and performance.

#### ACADEMIC REASSESSMENT

Los Angeles Unified's special education resource teacher, Judy Yu, conducted Student's academic assessment. Yu had a bachelor's degree in child development and a mild-moderate teaching credential. She had been a special education teacher at Los Angeles Unified for five years, and had conducted over 100 academic assessments. Yu was appropriately credentialed and qualified to conduct Students academic assessment.

Yu's assessment materials and procedures were free of racial, cultural and sexual bias, and administered to yield accurate information on Student's academic abilities and achievement. She used a variety of assessment tools and testified that the information she gathered was accurate. She was trained in administering, scoring and interpreting the results of the test instrument she administered.

Yu gathered relevant academic information about Student through teacher interviews and a teacher questionnaire. Yu interviewed Student's fifth grade teacher, who reported Student performed below grade level in reading, writing, and math. Student demonstrated a positive attitude in class, was flexible and could transition without challenges. Student communicated in English and spoke in complete sentences, but struggled to elaborate ideas. Student's short attention span was an area of significant concern. Student exhibited difficulty sustaining attention during class lessons, independent assignments, and required frequent redirection to stay on task. The teacher reported Student did not understand or confused written and oral

directions, and often needed information dictated. Student often failed to focus on relevant aspects of assignments, and did not complete work because he did not sustain the effort or had difficulty focusing during independent written assignments.

Because Student's academic assessment occurred at the beginning of his fifth grade year, Yu also had Student's fourth grade teacher complete a questionnaire to obtain a more complete understanding of Student's academic abilities. The fourth grade teacher indicated that Student was motivated to learn about science and math, but performed below grade level in reading, writing and math. Similar to Student's current teacher, Student's previous teacher reported Student had difficulty staying focused in class, became easily distracted and required frequent adult redirection. Student exhibited difficulty following instructions due to his short attention span, and needed someone to tell him what to do. When off task, Student missed cues to turn in papers or take out materials. Student experienced difficulty keeping up with the class. Based upon in-class assessments in fourth grade, Student did not make significant progress towards his early literacy skills and remained well below average throughout the year.

Yu administered a standardized test to measure Student's academic achievement in the domains of reading decoding and comprehension, spelling, written expression, math calculation and application, and oral language. Student's test results reflected academic achievement below grade level in reading, writing and math. Student's performance was consistent with the teachers' reports of Student's abilities, and difficulties with attention and focus in the classroom.

## SOCIAL-EMOTIONAL REASSESSMENT

A record review of Student's work, study habits, and social skills indicated marks for constant performance in citizenship and cooperation. Student did not present as a disciplinary problem.

Parent completed the parent questionnaire, and reported Student showed good behavior at home. Student followed rules at home and in the community. He got along well with other children, and could interact cooperatively. Student initiated play with other children. He demonstrated more control over his emotions and could resolve conflicts with other children. Student behaved respectfully with adults. During her telephone interview with Rodriguez, Parent did not report significant concerns about Student's social communication or behavior. Parent reported she did not have concerns regarding autistic-like behaviors. Parent did not observe Student to have difficulty with transitions, nor did he have sensory sensitivity to sounds or textures. Student did not engage in repetitive behaviors and did not isolate himself when around other people.

Student's current teacher reported that in the classroom, Student easily adjusted to changes in routines and transitions between activities. Student followed classroom and school rules. On the other hand, Student demonstrated some rigidity on changes or interruptions in daily routines. The teacher related her primary concern as Student's lack of focus and difficulty with personal space.

Regarding Student's social interactions, his teacher reported Student did not have friends in school and preferred to keep to himself rather than make friends. Student required verbal prompts from adults to initiate social interaction with peers. Student's fourth grade teacher reported similar.

Rodriguez interviewed Student, who reported he got along well with his parents and older siblings. Student reported his favorite part of the school day was recess when he did not have to deal with other students, who he found annoying. Student reported he did not have friends because he did not consider friends to be important, and was happy without friends. Rodriguez noted Student did not appear concerned about not having friends in school.

Rodriguez administered a rating scale questionnaire to Parents, Student's current teacher and his fourth grade teacher. The scale was designed to assess and clarify a variety of emotional and behavioral disorders of children to aide in the design of interventions.

Parents' ratings were inconsistent when compared to his those of his teachers. Parents rated all of Student's behaviors as average. Both teachers reported at-risk to clinically significant concerns in the areas of withdrawal, attention problems, learning problems, social skills, leadership skills, study skills, and overall adaptive skills. Based upon the behavioral ratings, Student presented with behavioral concerns in the school setting, but exhibited no behavioral challenges at home.

As an additional behavioral assessment, Rodriguez administered a rating scale, designed to measure the presence and severity of behaviors related to attention deficit hyperactivity deficit. Assessment areas included inattention, hyperactivity, impulsivity, learning problems, executive functioning, aggression and peer relations. Parent ratings and teachers' ratings again indicated inconsistent results. Both teachers reported more behavior concerns in the school setting than reported by Parent in the home setting. On a self-report, Student scored himself with very elevated ratings with inattention.

Rodriguez administered a rating scale to identify symptoms, behaviors and associated characteristics of autism spectrum disorders. Parent and Student's two teachers completed the rating scales. Once again, the raters were inconsistent in their responses, reflecting that autistic-like behaviors were observed in the school setting, but not observed in the home setting. Based upon teachers' ratings, Student fell within the very elevated range of characteristics associated with autism. These characteristics included difficulties with unusual behaviors, peer socialization, stereotype, behavioral rigidity, sensory sensitivity, social communication, self-regulation, social-emotional reciprocity, atypical language and attention.

Based upon social-emotional assessment results, Rodriguez concluded Student evidenced social, emotional and behavioral needs which adversely impacted his access to education and educational performance. While Student displayed significant behaviors characteristic of autism spectrum disorder at school, he did not exhibit these behaviors in the home setting.

Concurrent to the psychoeducational reassessment, Los Angeles Unified conducted a functional behavior assessment to focus on target behaviors of off-task behaviors, including day-dreaming, spacing out, and fidgeting in both structured and unstructured settings. Accordingly, both the psychoeducational assessment and the functional behavior assessment were used to gather information about Student's functional performance. The functional behavior assessment is not at issue in this case.

The September 18, 2019 psychoeducational re assessment was completed by Rodriguez, a qualified bilingual school psychologist. The assessment was comprehensive, valid and reliable, and cross-validated through multiple sources of information. The reassessment considered the special education eligibility categories of specific learning disability, other health impairment, and autism. Assessment

instruments were selected in order to appropriately address the referral considerations and are considered to be culturally and linguistically sensitive. The assessment included assessment of Student's cognitive abilities and processing, as well as his social-emotional functioning and how these areas impacted his ability to access his educational program.

The assessment included standardized testing that utilized measures including input from Student, his parents and his fourth and fifth grade teachers. Rodriguez and Yu reviewed Student's educational history, observed Student in various settings of his school day, and interviewed Student, his parents and his teachers.

All areas of suspected disability were discussed at the September 20, 2019 IEP team meeting when Rodriguez and Yu presented their assessment reports to the IEP team. The information compiled from various sources and testing presented interrelated data based upon Student's areas of suspected disability, autism, specific learning disability and other health impairment due to attention deficits. Assessment data did not suggest additional areas of suspected need for further evaluation. The re-assessment and written report contained sufficient information for the IEP team to determine eligibility and present levels of performance needed to determine whether Student's IEP required modifications or additions to provide Student with educational benefits.

Los Angeles Unified's September 19, 2019 psychoeducational reassessment was appropriate. Los Angeles Unified is not required to provide Student an independent psycho-educational evaluation at public expense.

## 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.

## ISSUES

1. The September 18, 2019 psycho-educational evaluation was appropriate. Los Angeles Unified prevailed on Issue 1.

## RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, 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