



DEPT. OF COMMERCE AND CONSUMER AFFAIRS

2003 DEC 31 P 1:25

HEARINGS OFFICE

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the )
DEPARTMENT OF EDUCATION, )
STATE OF HAWAII, )
Petitioner, )
vs. )
)
) as )
the Parents of )
Respondents. )

DOE-2003-064
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION; APPENDICES "A" and
"B"

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On June 3, 2003, the Department of Education ("Petitioner") submitted a request for a due process hearing under Hawaii Administrative Rules ("HAR") Title 8, Chapter 56 with respect to the appropriateness of its evaluation of kindergarten student I. Prehearing conferences were held on July 16, 2003 and September 11, 2003, and attended by [redacted] Esq., attorney for [redacted] and [redacted] ("Respondents") and [redacted] Esq. attorney for Petitioner. On September 12, 2003, October 2, 2003, and November 12, 2003, the hearing was conducted by the undersigned Hearings Officer. Petitioner's representatives

[REDACTED] and [REDACTED] were present on the above dates and Petitioner was represented by Mr. [REDACTED]. Mrs. [REDACTED] was also present on the above dates, and Respondents were represented by Mr. [REDACTED].

At the close of the hearing, the parties agreed to file written briefs by December 3, 2003, and to extend the decision deadline to December 22, 2003. On December 2, 2003, Petitioner asked to extend the briefing deadline to December 5, 2003 and briefs were filed on December 5, 2003. On December 17, 2003, Petitioner requested an extension of the decision deadline to December 31, 2003.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the Hearings Officer renders the following findings of fact, conclusions of law and decision.

## II. FINDINGS OF FACT

1. [REDACTED] age 6 years, 7 months ([REDACTED]) was a kindergarten student at [REDACTED] Elementary School during the 2002-2003 school year. [REDACTED] is presently a first grade student at [REDACTED] Elementary School ("School").
2. On November 22, 2002, the School's Student Support Team ("Team") met to discuss [REDACTED]'s eligibility for special education services. The Team included [REDACTED] vice-principal, Mrs. [REDACTED] kindergarten teacher, Petitioner's designee, and [REDACTED] student services coordinator. The Team agreed that [REDACTED] "had progressed since the beginning of the school year and is within the normal kindergarten range of learning at this time" and would continue to monitor [REDACTED]. No evaluation was ordered at this time.
3. On November 22, 2002, Petitioner issued a Prior Written Notice of Department Action, a copy of which is attached hereto and incorporated herein by reference as Appendix "A".
4. On March 7, 2003, Mrs. [REDACTED] submitted a Request for Evaluation for [REDACTED] to the School. On that date, the Team met to discuss [REDACTED] eligibility for [REDACTED].

special education services. The Team included [redacted] principal, [redacted], [redacted] and Mr. and Mrs. [redacted]. The Team did not think testing was necessary, however, it agreed to conduct an evaluation of [redacted] to rule out Mrs. [redacted] concerns about dyslexia and to be sure that the Team did not overlook any potential educational deficit.

5. On March 7, 2003, Petitioner issued a Prior Written Notice of Department Action, a copy of which is attached hereto and incorporated herein by reference as Appendix "B".

6. [redacted] evaluation, performed by School personnel and personnel from Petitioner's [redacted] District Office, included the following assessments:

- (1) Wechsler Preschool and Primary Scale of Intelligence - 3<sup>rd</sup> Edition;
- (2) Comprehensive Test of Phonological Processing ;
- (3) Wechsler Individual Achievement Test;
- (4) A speech-language assessment which included the Test of Language Development Primary, III, the Test of Auditory-Perceptual Skills, Revised, and a screening regarding [redacted] hearing, voice, fluency, articulation, and language skills; and
- (5) An occupational therapy assessment which included the Beery-Buktencia Developmental Test of Visual-Motor Integration, the Bruininks-Oseretsky Test of Motor Proficiency, and the Motor-Free Visual Perception Test.

7. The Team met on May 7, 2003, to discuss the results of [redacted] evaluation. The Team included Ms. [redacted], Ms. [redacted], Ms. [redacted], Mrs. [redacted], [redacted] speech therapist, [redacted] psychological examiner, and [redacted] occupational therapist. During the meeting, the procedures for each assessment were explained to the Team, [redacted] scores were discussed, and Mrs. [redacted] questions were answered.

8. On April 3, 2003, [redacted] administered the Wechsler Preschool and Primary Scale of Intelligence - 3<sup>rd</sup> Edition ("WPPSI-III") to [redacted]. As of April 3, 2003, [redacted] (was 5 years, 11 months of age. [redacted] scores were as follows:

- (1) WPPSI-III - verbal (100), performance (103), and scale score (103). s verbal reasoning abilities were in the average range and above approximately 50% of her peers. Her nonverbal reasoning abilities were also in the average range and above approximately 58% of her peers. had a general cognitive ability within the average range of intellectual functioning and was above approximately 58% of her peers.

Petitioner's Exhibit 25.

9. On April 25, 2003, [REDACTED] and [REDACTED] administered the Comprehensive Test of Phonological Processing ("CTOPP") to [REDACTED]. As of April 25, 2003, [REDACTED] was 6 years, 0 months of age.

The eight subtests in the CTOPP were divided into three categories: Phonological Awareness (Ellison, Blending Words, and Sound Matching), Phonological Memory (Memory for Digits and Nonword Repetition), and Rapid Naming (Rapid Color Naming and Rapid Object Naming). [REDACTED] composite scores were Phonological Awareness (89), Phonological Memory (133), and Rapid Naming (91). [REDACTED] score in the Phonological Awareness portion was one point below average (the average range being 90-110), her Phonological Memory score was superior, and her Rapid Naming score was average.

In the Ellison subtest, the testing administrators stated that [REDACTED] did not understand the directions and responded by saying rhyming words, significantly lowering her score on this subtest. Per the testing administrators, [REDACTED] understood the directions in all other phases of the CTOPP. Petitioner's Exhibit 20.

10. On April 16, 2003, [REDACTED] administered the Wechsler Individual Achievement Test ("WIAT") to [REDACTED]. As of April 16, 2003 [REDACTED] was 5 years, 11 months of age. [REDACTED] s scores were as follows:

- (1) Reading (105), Math (107), and Written Language (108). All three of [REDACTED] s scores fell in the average range and a high average score was noted on the Math Reasoning subtest. The following was noted regarding these tests:

**Reading:** \_\_\_\_\_ was successful in identifying all letters. She stated the sound for all the consonant sounds except for letter y. She also knew the short vowel sound a. She was successful in recognizing two letter blends. The following sight words were read correctly: a, my, no, you, and the. One of the two rhyming words items was answered correctly.

**Writing:** \_\_\_\_\_ wrote her first and last name correctly. When presented with consonant sounds, \_\_\_\_\_ was able to write the corresponding letter to all sounds, except for y and l. She was also successful spelling consonant blends and the words we and is. Good alignment, spacing and letter formations were noted.

**Math:** \_\_\_\_\_ was successful discriminating between numbers and letters. She was able to complete a number sequence, write numbers and count objects accurately.

On the Math Reasoning subtest, \_\_\_\_\_ was successful in identifying a triangle, second ordinal position and number patterns. She solved simple word problems and answered calendar-related question correctly. She did not know the number of pennies in a dime and could not tell time to the hour.

Petitioner's Exhibit 22.

11. On April 3, and 9, 2003, \_\_\_\_\_ administered a speech-language assessment to \_\_\_\_\_. On April 3, and 9, 2003, \_\_\_\_\_ was 5 years, 11 months of age. The speech-language assessment included the Test of Language Development Primary ("TOLD-P:3"), the Test of Auditory-Perceptual Skills-Skills Revised ("TAPS-R"), and a screening regarding \_\_\_\_\_ hearing, voice, fluency, articulation, and language skills.

scores were as follows:

- (1) TOLD- P:3 – Picture Vocabulary (9-average), Relational Vocabulary (10-average), Oral Vocabulary (11-average), Grammatic Understanding (9-average), Sentence Imitation (7-low average), and Grammatic Completion (10-average). Rachel's composite scores were Spoken Language Quotient (95-average), Listening Quotient (94-average), Organizing Quotient (91-average), Speaking Quotient (103-average), Semantics Quotient (100-average), and Syntax Quotient (91-average);

- (2) TAPS-R – Auditory Number Memory/Forward Number Memory (118-high average), Auditory Number Memory/Reversed (91-average), Auditory Sentence Memory (107-average), Auditory Word Memory (117-high average), Auditory Interpretation of Directions (108-average), Auditory Word Discrimination (99-average), and Auditory Processing (106-average); and
- (3) A hearing screen was administered to [redacted] at 20 decibels sound level at 1,000, 2,000, and 4,000 hertz frequency level for both ears. [redacted] passed the formal hearing screening at all frequency for both ears. The speech-language pathologist also assessed [redacted] voice, fluency, articulation, and language skills and found them all to be within the normal limits at this time with no academic difficulties. [redacted] vocal parameters were appropriate for her age and gender, and her connected speech was fluent, void of secondary characteristics, and easily understood.

[redacted] s subtest scores on the TOLD-P:3 fall in the average to low average range and quotient scores are all in the average range. In the TAPS-R, [redacted] standard scores ranged from average to high average.

Petitioner's Exhibit 24.

12. On April 9, 2003, [redacted] administered an occupational therapy assessment to [redacted]. On April 9, 2003, [redacted] was 5 years, 11 months of age. The occupational therapy assessment included the Beery-Buktencia Developmental Test of Visual-Motor Integration ("Beery-Buktencia"), the Bruininks-Oseretsky Test of Motor Proficiency ("Bruininks-Oseretsky"), and the Motor-Free Visual Perception Test-Revised ("MVPT-R"). Ms. Muraoka also observed [redacted] grasp during testing. [redacted] scores were as follows:

- (1) Beery-Buktencia – (standard score-109-average - age equivalent = 7 years). [redacted] was 5 years old, 11 months of age when tested. According to the occupational therapy program report interpretation:

This test looks at the student's ability to visually perceive a design, process or integrate how it is formed and reproduce the

design by drawing it. These skills are necessary for the **formation of letters, and words.** (Emphasis added).

- (2) Bruininks-Oseretsky - Visual-Motor Control subtest (standard Score -25 -high performance - age equivalent = 10 years, 2 months); and Upper Limb Speed and Dexterity Subtest (standard score 25-high performance - age equivalent = 7 years, 5 months). According to the occupational therapy program report interpretation:

On the Bruininks-Oseretsky Test of Motor Proficiency, she demonstrated high performance for her age in the area of visual motor control (cutting on a line and drawing within paths). On the speed and dexterity subtest, she demonstrated high performance with manipulation of objects such as beads, pegs, cards, pennies, and **paper/pencil control.** (Emphasis added).

- (3) MVPT-R - (perceptual quotient -127- high average. Chronological age = 5 years, 11 months. Perceptual age = 8 years, 8 months). According to the occupational therapy program report interpretation:

demonstrated skills above her age level when compared to typical peers her age. This test is a non-motor visual perception test that addresses the following areas, which **impact the formation of letters, copying, spelling, and reading:** visual discrimination (ability to discriminate like forms); visual memory (ability to recall forms from memory); visual form consistency (ability to discriminate forms regardless of size, shade, and position); visual closure (ability to discriminate forms from a series of incomplete forms); and visual spatial relations (ability to discriminate forms that are different from the rest of the forms). (Emphasis added).

It was observed to grip her pencil using a dynamic tripod posture, a mature pencil grasp, when performing the written portions of these tests. A mature tripod grasp indicates three fingers are on the pencil with stability. She was able to write the upper and lower case letters of the alphabet with adequate formation and placement on the given line for her age. She was also able to copy a short sentence from the board with adequate placement of the letters on the line and spaces in between the words.

According to the occupational therapy program report:

At this time, [redacted] is demonstrating skills average to above-average and high for her age in the area of fine-motor control and coordination, and in the area of visual perception/visual-motor control. Cutting skills, pencil grasp and formation of letters appear to be her area of strength. (Emphasis added). At this time, occupational therapy services are not indicated. She would continue to benefit from her current classroom program.

Petitioner's Exhibit 23.

13. In addition to the assessments, the Team considered [redacted] report cards, classroom work samples, input from Ms. [redacted] and Mrs. [redacted] and testing performed by Ms. [redacted]. After much discussion and based on all of the data, the Team determined on May 7, 2003, that [redacted] was not eligible for special education services and programming under the specific learning disability criteria.

14. On May 7, 2003, Mrs. [redacted] disagreed with the results of [redacted] evaluation and requested that an Independent Educational Evaluation ("IEE") be conducted at public expense.

15. On May 29, 2003, Petitioner requested a hearing under HAR §8-56-72 to determine whether its evaluation of [redacted] was appropriate.

16. In June of 2003, Mrs. [redacted] took [redacted] to neuropsychologist [redacted] Dr. [redacted] evaluation on [redacted] began on September 13, 2003 and included the following assessments:

<sup>1</sup> The Hearings Officer was not given a copy of Dr. [redacted] report. After interviewing [redacted] on three occasions, Dr. [redacted] testified she concluded "something was amiss" and an assessment of [redacted] was necessary to measure her ability across various functional areas and to gather information. [redacted] was 6 years, 4 months of age when she was evaluated by Dr. [redacted]. Dr. [redacted] recommended that [redacted] see Dr. [redacted], a pediatric neurologist, to determine whether brain trauma or head injury were factors affecting [redacted] performance.

Dr. [redacted]'s diagnostic impression was that [redacted] had a cognitive disorder not otherwise specified, and reading and math disorders. Dr. [redacted] stated that her test results did not disclose a classic dyslexic pattern and she was unsure at this time what she was seeing, pending Dr. [redacted]'s report and further testing of [redacted] (Emphasis added). Nor was Dr. [redacted] familiar with kindergarten and first grade math curricula in the State of Hawaii.

Dr. [redacted]'s testimony was based on speaking with Mrs. [redacted] her interviews and testing of [redacted] and not on [redacted] classroom activities.



- (1) Wechsler's Intelligence Scale for Children;
- (2) Wide Range Assessment of Learning and Memory;
- (3) Halstead-Reitan Neuropsychology Test Battery;
- (4) Gray Oral Reading Test; and
- (5) Wide Range Achievement Test.

17. According to [REDACTED] s first grade teacher, at the end of the first quarter on October 3, 2003, [REDACTED] was making satisfactory gains in Reading, Writing, Math, and Science. In Listening and Speaking, [REDACTED] gains were evaluated as satisfactory plus. [REDACTED] is presently performing at the first grade level for Math. At the beginning of first grade, [REDACTED] reading was evaluated and she scored at the beginning kindergarten or mid-kindergarten level. On November 6, 2003, [REDACTED] was informally evaluated by Ms. [REDACTED] using the same reading test, and she scored at the beginning first grade level.

III. CONCLUSIONS OF LAW

The sole issue in this case is whether Petitioner's evaluation of [REDACTED] was an appropriate evaluation under the Individuals With Disabilities Education Act ("IDEA").

Based on the credible evidence presented at the hearing, the Hearings Officer concludes that Petitioner proved by a preponderance of the evidence that its evaluation of [REDACTED] was appropriate under the IDEA. The assessments revealed [REDACTED] performed in the average range, she continued to make progress in kindergarten, and she continues to progress satisfactorily in the first grade. (See HAR §§ 8-56-8 and 8-56-9).

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Dr. [REDACTED], Petitioner's expert witness, a clinical psychologist who consults with Petitioner in Neuropsychology, stated that the variability noted in Dr. [REDACTED] report is consistent with testing young children; i.e., before the ages of 9-12. This variability is due to the young child's degree of ability to focus and concentrate and to do what they are asked to do in a testing situation.

Regarding Dr. [REDACTED] s diagnosis of a math disorder, Dr. [REDACTED] stated that at this age, there is very little data on which to base a math learning disorder. Per Dr. [REDACTED] at this time Petitioner should keep track of [REDACTED], make sure she is getting proper math and reading instruction, and retest her in a year. Based on the test results, Dr. [REDACTED] stated that [REDACTED] does not have a learning disorder.

Dr. [REDACTED]'s evaluation of [REDACTED] is incomplete and she cannot conclusively say that [REDACTED] is dyslexic.

On the other hand, Ms. [REDACTED] saw [REDACTED] in the classroom every day that [REDACTED] was present at school in kindergarten and Ms. [REDACTED] sees [REDACTED] every day in first grade, often before school and during recess, as well. [REDACTED] is a conscientious student who wants to learn and do well in school. Though a mother is perhaps the person who instinctively feels she knows her child the best, the professional opinion of the child's teachers should be given considerable weight. The teacher is the person who spends six or more hours each day, five days a week with the child and is directly involved in teaching the child and evaluating his or her progress. [REDACTED]'s scores in Petitioner's evaluation placed her in the average range. Some of [REDACTED]'s subtest scores were high average and one subtest score was below-average<sup>2</sup>.

Ms. [REDACTED] with her 16 years of teaching experience and knowledge of [REDACTED], convinced the Hearings Officer that [REDACTED]'s progress was thoroughly monitored in kindergarten. Furthermore, Ms. [REDACTED] with her 34 years of teaching experience and her interest in [REDACTED] and her other students, continues to monitor [REDACTED] in the first grade. [REDACTED] appears to be thriving in the first grade.

Accordingly, the Hearings Officer thereby concludes that Respondents are not entitled to an IEE at public expense.

#### IV. DECISION

For the reasons stated above, the Hearings Officer finds and concludes that Petitioner proved by a preponderance of the evidence that 1) Petitioner's evaluation of [REDACTED] was appropriate under the IDEA; and 2) Respondents are not entitled to an IEE at public expense.

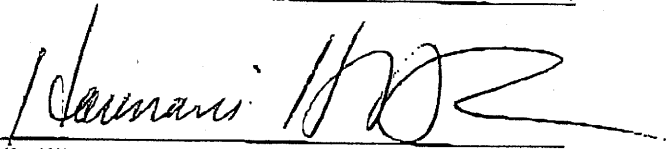
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<sup>2</sup> However, the below-average score was merely one point below the average range and the administrator of this test stated that [REDACTED] did not understand the directions. The administrator strictly followed the testing protocol, and was not allowed to keep explaining the directions to [REDACTED] after the required number of attempts.

**RIGHT TO APPEAL**

The parties to this case have the right to appeal this decision to a court of competent jurisdiction. The appeal must be made within thirty days after receipt of this decision.

DATED: Honolulu, Hawaii, DEC 31 2003



HAUNANI H. ALM  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

In Re Department of Education, State of Hawaii vs. \_\_\_\_\_ and \_\_\_\_\_  
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