BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the matter of: COACHELLA VALLEY UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT	OAH CASE NO. 2010060472

DECISION

Administrative Law Judge Robert F. Helfand (ALJ), Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Thermal, California on October 25-29, 2010, and November 17-18, 2010.

Coachella Valley Unified School District (District) was represented by attorney Jack B. Clarke, Jr. of Best, Best & Krieger, LLP. Laura Fisher, Director of Pupil Services/Special Education for the District, was also present during the hearing.

Student was represented by attorney Danielle Augustin of Augustin Egelsee LLP. Sheila Gibert, a legal assistant, was present during the hearing. Student's mother and father (Parents) were also present. Emiliano Favela, a Spanish language interpreter, was also present during the hearing.

PROCEDURAL HISTORY

Student filed a request for due process hearing (Student complaint), OAH Case No. 2010060469, on June 10, 2010. On June 14, 2010, the District filed its request for due process hearing (complaint). On June 23, 2010, the District filed a motion to consolidate the two matters, which was granted by OAH on June 29, 2010. On October

14, 2010, Student filed a motion for leave to file an amended complaint, which brought new issues. At the scheduled prehearing conference on October 18, 2010, for the consolidated cases, oral arguments were held as to Student's motion. Student's motion for leave to file an amended Student complaint was granted and the order consolidating the instant matter with OAH Case No. 2010060469 was vacated and this hearing proceeded on the District complaint only.

At the conclusion of the hearing, the record remained open to permit the parties to submit post-hearing briefs. Both parties submitted post-hearing briefs. The matter was submitted on December 6, 2010.

The following witnesses testified during the hearing: Griselda Fernandez; Annette Miller; Martha Angeles; Corrine Szarvas-Kidd; Laura Fisher; Student's mother (Mother); Robert Patterson, Psy.D.; Hortencia Cervantes; and Laura Hernandez.

ISSUE[1]

The sole issue at hearing is:

Was the District's multidisciplinary assessment of Student conducted in February and March 2010, appropriate?

As a resolution, the District is seeking a ruling that the assessment was appropriate and that it need not fund an Independent Education Evaluation requested by Student's parents.

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[1] The District's complaint also contained a second issue regarding the appropriateness of the District's March 29, 2010 Functional Behavior Assessment Report. This issue was withdrawn at the prehearing conference after Student agreed that the report was appropriate.

FACTUAL FINDINGS

JURISDICTIONAL AND GENERAL FACTS

1. Student is a seven-year-old boy who currently resides with his family within the geographical limits of the District. He has, since April 28, 2008, and continues to be eligible for special education and related services under the category of speech or language disorder.[2] A speech language assessment conducted in April 2008, indicated Student exhibited impairment in the areas of expressive/receptive language skills. Student has attended the Cesar Chavez Elementary School (Chavez) in a dual language immersion program commencing with kindergarten during school year 2008-2009.

2. Student's primary language according to the Home Language Survey is Spanish, although English is also spoken in the home. In fall 2009, Student scored in the "early intermediate" range in the areas of listening, speaking and overall on the California English Language Development Test (CELDT).

SCHOOL YEAR 2008-2009

3. During school year 2008-2009, Student attended Mrs. Estupinan's kindergarten class. Student received trimester marks (1-needs improvement, 2-some progress, 3-good, and 4-excellent) as follows:

[2] "A pupil shall be assessed as having a language or speech disorder which makes him or her eligible for special education and related services when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services." (Ed. Code, § 56333.)

Reading	2	2+	3
Writing	1	2	3
Listening/Speaking	1	2	2
Math	1	2+	2+

Also, Estupinan rated Student's behavior as "satisfactory' or "outstanding" in following class/recess rules, respecting authority, and in peer relations.

FALL 2009

4. In school year 2009-2010, Student was a first grader in the dual language (Spanish/English) program, a general education program, at Chavez. Student was younger than the typical first graders, as he turned six years old on November 13, 2009. In this program, Student received instruction in Spanish 90 percent of the time with the remaining 10 percent in English during the first grade. Hortencia Cervantes was Student's homeroom teacher who instructed him in Spanish, and Laura Hernandez was Student's English Language Development teacher. Both teachers have certification in bilingual cross-culture and have taught at the elementary school level in excess of 15 years.

5. For school year 2009-2010, Student was in Cervantes' class the entire day except for one hour when he was with Hernandez at English Development. At the beginning of the school year, Cervantes felt that Student was a "happy child" although he had little communication with her and his peers. Shortly after the start of the school year, Student began to exhibit behavior problems. He did not participate in class activities and would sit or lay down by himself and read a book or look at an object. Student did not engage in socialization in the classroom and engaged in three physical altercations with peers. Student refused to do assignments and would often tear up work pages, scribble on them, or poke holes through them. He refused to take spelling tests and would rip up the test. Cervantes moved Student next to her, with little effect

on his behaviors. When the teacher attempted to talk to him about his behaviors, Student did not respond. Student would sometimes have a hard time transitioning to a new activity. During Halloween, Student refused to go to the cafeteria as he was scared of monsters. At the time, the cafeteria was decorated with monsters and other Halloween pictures. Cervantes felt that Student was "overwhelmed" with the first grade curriculum which was much harder than kindergarten.

6. Student had no behavior problems in Hernandez's one hour English Language Development class. Hernandez's class is "interactive" with the pupils chanting, reading aloud, and speaking. A lot of the assignments are done by pupils pairing up with peers. Student actively participated without problems although initially he did not volunteer. But as the year went on, Student would volunteer.

7. Cervantes notified Parents about Student's behaviors. She suggested that Student be reassessed, to which they agreed. Cervantes also informed Delia Salado, a District facilitator, of her concerns and requested that an IEP team meeting be held.

DECEMBER 17, 2009 IEP MEETING

8. On December 17, 2009, the Individualized Education Program (IEP) team convened a meeting at the request of Parents and Cervantes. Student's father (Father) and Mother attended accompanied by two advocates, Aracely Barriga and Catherine (last name unknown). Also attending were Laura Fisher, the District Director of Pupil Personnel/Special Education; Annette Miller, a speech language pathologist (SLP); Maria Ponce, Chavez principal; a District special education coordinator; Karen Kinder, a District behavior specialist;[3] Janelle Zandajas, a Spanish interpreter; and Cervantes.

[3] Kinder had completed an assessment in December 2008, to address concerns about frequent toileting accidents at school. Student's problems had been resolved prior to the start of the new school year.

9. Cervantes reported that at the beginning of the school year Student did not do much writing, opting to draw pictures instead. After working closely with him, Student began writing and was now at the middle level of the class. Student also knew his entire consonant and vowel sounds in both Spanish and English although he refused to participate in spelling tests. In math, Student could count to 65 verbally and write numbers to 100.[4] Cervantes' concerns involved Student's non-completion of work and his destruction of assigned work by scribbling on the work pages or tearing them up. Cervantes opined that Student's refusal to complete academic tasks results from his choice not to do the work or that he feels overwhelmed at times rather than an inability to do the assignments. Cervantes' other major concerns were that Student does not typically interact with peers and often plays alone. She also was concerned that Student "zones out" at times. Cervantes felt that it would be a good idea to assess Student for Autism.[5]

10. Student's advocate requested that the District retain Dr. Robert Gray to conduct a neuropsychological evaluation and JoAnne Abrassart to conduct a speech and language evaluation. Fisher indicated that the District would conduct a psycho-

[4] Student, in his written closing brief, refers to Student's present levels of performance (PLOP) which is contained on page two of the December 17, 2009 IEP document as far lower to what was described by Cervantes at the meeting. A close review of the PLOP page clearly shows that the PLOP was from the preceding IEP meeting on April 28, 2009 as the references include Student's levels as of March 27, 2009.

[5] Cervantes testified that she had been informed by Mother that Student had a sibling that is autistic. Based on this statement and a limited web search by her, Cervantes made the recommendation that Student should be assessed for Autism.

education assessment prior to considering whether to conduct a neuropsychological evaluation. Fisher also offered to commence counseling services prior to the completion of the District assessment, which was not accepted by Parents. The District's offer of a free appropriate public education (FAPE) was to (1) conduct a full psycho-educational assessment including speech and language; (2) conduct a functional behavioral assessment; (3) consider whether Student needed assistive technology; and (4) continue speech and language services per the March 27, 2009 IEP.

11. On January 3, 2010, the District forwarded to Parents a written assessment plan. The plan called for assessments in the areas of academic achievement, social/adaptive/behavioral/emotional, processing, perceptual/motor development, communicative development, health developmental, cognitive development, hearing, and vision. The multidisciplinary assessment team would be comprised of a school psychologist, resource specialist, nurse, language speech and hearing specialist, and a behavioral specialist. Parents consented to the assessment plan on January 30, 2010.

12. On January 10, 2010, the District, by Fisher, provided two Prior Written Notice forms to Parents as to their request for Independent Education Evaluations by Dr. Gray and Abrassart in the areas of neuropsychology and speech language.

THE DISTRICT'S MULTIDISCIPLINARY ASSESSMENT

13. The District's multidisciplinary assessment team was comprised of Griselda Fernandez, school psychologist; Martha Angeles, resource specialist; Teresa Hignight, school nurse; and Miller, SLP. The purpose of the assessment was to evaluate Student in the areas of speech/language, intellectual functioning, academic achievement, psychomotor/perceptual functioning, and social/emotional development and functioning. Because Student was from a family whose main language was Spanish and was taught 90 percent of the time in Spanish, Student was assessed in Spanish and

English in the areas of processing, academic achievement, and cognitive development. At the time of assessment, Student was six years, four months old.

14. The assessment team noted that Student's teacher, Cervantes, expressed concerns regarding Student's minimal communication in class; difficulty in responding to questions in Spanish; his "zoning out" during class; his failure to communicate or interact with peers; and inconsistent task completion. Parents' concerns were Student's communication and socialization problems, his speech delays, and his performing below grade level academically. On January 19, 2010, Student passed vision and hearing screenings given by the school nurse.

The Speech/Language Assessment

15. Miller conducted the speech/language assessment. Miller has a B.S. and M.S. in speech pathology from the University of Nebraska at Omaha. She has worked as a speech pathologist since 1985 and with the District since 2003. She possesses the California professional credential in speech-language-hearing and a certificate of clinical competence from the American Speech-Language-Hearing Association. She has worked as the assigned SLP to Student at Chavez since August 2009.

16. Miller administered the Weiss Comprehensive Articulation Test (Weiss); Peabody Picture Vocabulary Test, Fourth Edition (PVT-4); Expressive Vocabulary Test, Second Edition (EVT-2); the English and Spanish versions of the Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-4); Test of Pragmatic Language-Second Edition (TPL-2); and observations in the classroom and during speech language therapy sessions.

17. Miller observed Student in Hernandez's English Development class on January 19, 2010, and again on March 16, 2010. During the first observation, Student responded to questions by Miller as to "who" and "where" involving cards he was coloring. He also correctly sequenced a four part story for his teacher. On the second

occasion, Student greeted Miller and then he returned to task. Student followed instructions, actively participated in class activities, and assisted in handing out scissors. He was observed playfully teasing one boy and then worked appropriately with a partner during an exercise. While others presented to the class, Student sat quietly and appeared to pay attention.

18. Miller also included observations of Student during speech therapy sessions. Student always greets Miller and Mr. Medina, a speech assistant. Student did not speak Spanish during speech sessions even when given a question in Spanish. There are times when Student would be uncooperative because he did not want to leave an on-going activity in his classroom. But he did respond when given happy face pictures for a correct response by Miller.

19. On the Weiss, Student's speech intelligibility was rated "good." No abnormalities of the speech mechanism were found. There were three sounds which Student enunciated incorrectly, but he correctly said them after having the sounds repeated.

20. Student received a standard score of 79 (with a raw score of 70) on the PVT-4 which placed him in the 10th percentile. On the EVT-2, Student scored in the 27th percentile with a raw score of 69 and standard score of 91.[6] Miller opined that this placed him in the areas of receptive and expressive vocabulary within the low average to slightly below average range for a child of his age. On the TPL-2, Student was in the 30th percentile with a raw score of five and a pragmatic language usage index of 92. Student demonstrated age-appropriate use of logic and inference skills and an understanding of topic, purpose and indirect language. Student's performance was in the low average range for his age.

[6] Miller's written report had contained minor errors in the reported scores.

21. Student was given the CELF-4 in both Spanish and English. The Spanish version was administered by Jose Medina, a certified speech language assistant, under Miller's direction. Subtest scaled scores have a mean of 10. Student's scores in the subtests were as follows with the English version score reported first and then the score on the Spanish version:

Concepts & Directions	9	6
Word Structure	4	11
Recalling Sentences	5	4
Formulated Sentences	9	4
Word Classes-Receptive	13	11
Word Classes-Expressive	11	5
Word Classes-Total	12	8
Sentence Structure	7	7
Expressive Vocabulary	8	7

Student's standard scores (mean of 100, scores in the 85 to 115 range considered "average") in the CELF-4 English version were Core Language 81; Receptive Language 98; Expressive Language 75; Language Content 98; and Language Structure 77. His scores in the Spanish version were Core Language 59; Receptive Language 87; Expressive Language 59; Language Content 82; and Language Structure 61. These test results indicated that Student has stronger English language skills than Spanish language skills. The results also indicate that he had strong average receptive language skills with expressive language skills as a weakness in the areas of vocabulary, sentence structure, and morphology.

22. Miller found that Student was eligible for special education under the category of Speech/Language Impairment in the area of expressive language.

The Psycho-Education Assessment

23. The psycho-educational assessment was completed under the supervision of the school psychologist, Fernandez. The assessment comprised a records review; staff consultations; observations; interviews with Student, Parents and teacher; and the administration of standardized tests and rating scales. The rating scales utilized were the Gilliam Autism Rating Scale-Second Edition (GARS-2); Childhood Autism Rating Scale (CARS); Sensory Processing Measure Form (SPM); and the Burks Behavior Rating Scales, Second Edition (BBRS-2). The standardized tests utilized were the English and Spanish versions of the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV); Woodcock Johnson III Tests of Achievement (WJ-III); Bateria III Woodcock-Munoz Pruebas de Aprovemiento (Bateria); Beery-Buktenia Developmental Test of Visual-Motor Integration (VMI); Motor-Free Visual Perception Test-Third Edition (MVPT-3); Test of Auditory Processing Skills-Third Edition (TAPS-3); and Test of Auditory Processing Skills-Third Edition, Spanish-Bilingual Edition (TAPS-3:SBE).

24. The psycho-educational assessment was directed by Fernandez. Fernandez has been a school psychologist with the District since 2000. She received a B.A. in sociology from the University of California at Berkeley in 1987 and a M.A. in education with emphasis in educational psychology form the University of California at Riverside in 1995. She holds a California teacher credential as well as a Pupil Personnel Services credential with a specialization in school psychology. From 1987 to 2000, Fernandez was employed as a teacher. During the assessment, Fernandez consulted with two school psychology colleagues, Lynn DeFino and Corrine Szarvas-Kidd (Kidd).

Observations

25. Observations of the Student were conducted by Fernandez on March 1, 19, and 23, 2010, as well as during testing. Additionally, Miller observed Student in his English Development class on March 19, 2010 (as discussed in paragraph 17).

26. On March 1, 2010, Fernandez observed Student during morning recess. At first, Student stood alone by a tree. He was then approached by a girl, who seemed slightly older, and they engaged in conversation before proceeding to the swings where they took turns pushing each other. After the swings, the two shared a snack and continued playing until the bell rang.[7] Student then proceeded to his classroom without incident.

27. On March 19, 2010, Student was observed during lunch. He sat at a table with peers and engaged in friendly conversation with them. He appeared aware of his surroundings and did not appear to be bothered by the noise level. When the lunch supervisor asked the students to line up for dismissal, Student complied with the instructions while continuing to engage in conversation with his peers.

28. Fernandez observed Student in Cervantes' class on March 23, 2010. While other students were writing or reading at the table with Cervantes, Student was in his seat browsing through a book. On three occasions, he left his seat to retrieve a new book. Later, he looked at a book being read by a girl sitting next to him. The teacher called Student and gave him a map and writing paper which Student placed on the floor. He continued to look at the girl's book and then at his books until directed to prepare for lunch by Cervantes. Student then began looking for his sweater until the teacher directed him to it. After he retrieved the sweater, he was directed to return to his seat. After five more verbal prompts by Cervantes, he returned to the area but sat on the floor and not in his seat. Cervantes then released his group to go to lunch.

29. During testing, Student went willingly with Fernandez. Although shy, he did respond to questions. Fernandez was easily able to establish a rapport with Student.

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[7] Mother testified that Student often played with an older female cousin in and out of school.

Throughout, he was compliant, cooperative and hard working with her although he became reluctant to attempt tasks which he was unsure about. He appeared focused and made eye contact. This was in contrast with his demeanor during the academic testing by Angeles. Student did not want to leave his class and then refused to do parts of the Bateria, which resulted in those parts being readministered by Fernandez at a later date.

Intellectual Functioning

30. Student's intellectual functioning was assessed using the Spanish version of the WISC-IV. Student was also given two subtests from the English version. The WISC-IV is reported utilizing standard scores. A score of 10 on the subtests equates to "average." As to the index scores, the ranges are 69 and below as "extremely low" (second percentile and below), 70-79 as "borderline" (second to eighth percentile), 80-89 as "low average" (ninth to 23d percentile), 90-109 as "average" (25th to 73d percentile), 110-119 as "high average" (75th to 90th percentile), 120-129 as "superior" (91st to 97th percentile), and 130 and above as "very superior" (98th and above percentile).[8] Fernandez opted to use the Spanish version as the main measuring standard as Student's primary language was Spanish and he was being taught mainly in Spanish. The English version was utilized to provide baseline data as to Student's levels in English.

31. On the WISC-IV, Spanish, Student received a full scale IQ score of 105, which placed him in the "average" range and within the 63d percentile. His index scores varied from "borderline" to "very superior." The Working Memory Index measures the ability to sustain attention, short-term memory, auditory processing skills, working memory, and ability to rehearse strategies. Student scored 107, which was in the 68th

[8] Sattler, Assessment of Children (Fifth Edition, 2008), p. 388.

percentile and in the "average" range. His Working Memory subtest scores were 12 in digit span and 11 in letter-number sequencing. The Processing Speed Index requires the child to carry out instructions and relies heavily on visual processing skills. Student received a score of 112 which was in the "high average" range and the 79th percentile. His subtests scores were 12 in both coding and symbol search.

32. Student's score on the Verbal Comprehension Index was an 81 which was in the "borderline" range and within the 10th percentile. This index is composed of three subtests where the child is asked to respond verbally with likely learned information. He scored an 11 in similarities, which is in the average range. This indicates strength with tasks measuring verbal categorical reasoning skills. In the vocabulary and comprehension subtests, Student scored a four and five, respectively. This places him in the "borderline" range and indicates a weakness with tasks that measure conceptual thinking, fund of information, language development, and verbal comprehension skills. Fernandez opined that Student's low scores in this index were reflective of Student's known expressive language deficits and his learning two languages. Because of the differential between the similarities and the other two subtests, Student was given the information subtest, which was not reflected in the index score. This subtest measures a child's verbal comprehension and long-term memory skills. Student received a score of 9.

33. Student scored in the "very superior" range in the Perceptual Reasoning Index with a score of 121, which placed him in the 92d percentile. This index contains three subtests which require immediate problem-solving ability. The stimuli utilized are non-verbal and are presented visually. Student's scores on the subtests were 7 in block design, 14 in picture concepts, and 19 in matrix reasoning. These scores indicate that Student has a relative weakness with tasks that measure conceptual thinking and spatial perception skills, and he has a relative strength with tasks that measure visual-

perceptual reasoning and organization, attention, concentration, and nonverbal reasoning skills. Because of the difference between his score on block design and the other two subtests, Student was administered a supplemental subtest, the picture completion test, which was not reflected in the index score. This subtest measures alertness to detail and ability to differentiate between essential and nonessential details. Student scored 2, which was in the "extremely low" range. In analyzing Student's performance on the WISC-IV, *Spanish*, Fernandez concluded in her written report:

> Although there were significant differences between the four Index scores, the differences were associated primarily with his low scores on the two verbal Comprehension subtests (Vocabulary and Comprehension) and his high score on the Perceptual Reasoning subtest (Matrix Reasoning). Whereas his visual perceptual reasoning/organization, attention, concentration, and nonverbal reasoning are well developed, his conceptual thinking, language development, and verbal comprehension skills are less well developed.

34. Student was also administered the Verbal Comprehension and Working Memory Indexes of the WISC-IV in English. On the Verbal Comprehension Index, he scored 73, which is in the fourth percentile and in the "borderline" range. His subtests scores were 8 in similarities, 5 in vocabulary and 3 in comprehension. On the Working Memory Index, Student received a 97 which was in the 42d percentile and in the "average" range. He received 10 in the digit span and 9 in letter-numbering sequencing subtests. Fernandez concluded that the point difference between the English and Spanish versions was not significant and that the results were consistent.

Psychomotor/Perceptual Functioning

35. In the area of psychomotor/perceptual functioning, Student was evaluated through the administration of the VMI, TAPS-3:SBE, TAPS-3, and the MVPT-3. Additionally, Fernandez examined samples of Student's school work, which indicated that Student wrote legibly.

36. The VMI requires the child to copy geometric designs without erasure. The designs are of increasing difficulty and reflect the child's fine motor skills. Student scored in the "average" range with a score of 101, which placed him at an age-equivalency of six years, three months.

37. The TAPS-3 evaluates a child's auditory processing skills necessary for the development, use, and understanding of language in both the school and everyday settings. Student was given both the English and Spanish (SBE) versions. There are three index scores and nine subtest scores as well as an overall score. In the SBE, Student failed to get a correct answer in three of the subtests: phonological segmentation, auditory comprehension, and auditory reasoning. In the English version, he failed to score a correct response on the phonological segmentation subtest and only a single right answer on auditory reasoning. Fernandez scored these subtests by attributing a scaled score as directed by the test manual.[9] Student's overall scores were 94 in the SBE and 82 in the English version. Student's index and subtest scores were:

Index	SBE	English
Phonological	92	75
Memory	100	90
Cohesion	85	75

[9] Fernandez failed to note in her written report the actual raw scores.

Subtest		
Word discrimination	11	9
Phonological segmentation	4	1
Phonological blending	10	5
Number Memory Forward	12	10
Number Memory Reversed	12	9
Word Memory	9	8
Sentence Memory	7	5
Auditory Comprehension	6	5
Auditory Reasoning	8	5

Student's scores on the English version ranged from "borderline" to "average;" while on the SBE, his scores ranged from "low average' to "average." Fernandez testified that it was proper to utilize the SBE scores as Student's primary language was Spanish, as well as the vast majority of his instruction. At the time of the evaluation, Student had received no instruction in decoding in his English Development class. Fernandez noted that Student demonstrated relative strength performing tasks that measure basic memory processes including sequencing as evident by his score in the Memory Index, and relative weakness in tasks designed to measure comprehension, inferences, social pragmatics and prediction as evident in the Cohesion Index.

38. The MVPT-3 is designed to evaluate overall visual perceptual ability in people starting at the age of four through adult. These tasks involve spatial relationships, visual discrimination, figure-ground, visual closure, and visual memory. Student scored in the "high average" range with a score of 110, which was age-equivalent of a child seven years, six months.

39. Fernandez concluded that Student's fine/gross motor skills were not an area of concern and there were no factors which would directly affect Student's "ability to profit from the educational process."

Academic Achievement

40. Student's level of academic achievement was measured through the administration of the WJ-III and its Spanish version, the Bateria. The achievement testing was administered by Martha Angeles, a District resource specialist. Angeles has a B.A. in interdisciplinary studies with an emphasis in professional education from National University and a M.A. in special education from Chapman University. She has worked for the District since 1980 as a bilingual aide (1980-1992), a bilingual classroom teacher (1992-4), an elementary special day class teacher (1994-8), and a resource specialist teacher (since 1998). She administered the WJ-III in the afternoon of February 26, 2010, for one and half hours until Student complained he was tired. She completed the WJ-III one week later during another one and half hour session. On March 5, 2010, Angeles pulled Student out of his class to administer the Bateria. When Angeles attempted to pull Student out of class, there was an activity ongoing which Student seemed to enjoy. She returned after the morning recess but Student was resistant to leaving his class. She explained that the test would be in Spanish and was easy; Student was uncooperative by refusing to speak or pick up his pencil. He did cooperate on some subtests by pointing to the picture in response to questions although he would not speak. He was able to complete six of the 14 tests for Angeles. On March 26, 2010, Fernandez administered the remaining eight tests which Student had failed to complete for Angeles..

41. Student scored a zero raw score (no correct responses) in two WJ-III subtests-reading vocabulary and story recall. On the Bateria, he had zero raw scores in three subtests-story recall, reading fluency, and reading vocabulary. The examiner utilized the test manuals to score Student's age and grade equivalencies.[10] In those

[10] Because Student did not register a correct answer in a subtest, the manual does not require that Student receive a standard score for that test. In her written

subtests, Student fell in the below kindergarten grade level. Student's WJ-III subtest standard scores ranged from the "borderline" to "high average" with his high scores in word attack (116), written samples (107), and letter-word identification (100). His WJ-III low scores were in understanding directions (74), oral comprehension (82), and math fluency (84). Student's standard scores ranged from "borderline" to "superior" on the Bateria. His high standard scores were on spelling (125), written samples (108), letter-word identification (106), and word attack (106). His low Bateria standard scores were in oral comprehension (73), picture vocabulary (74), and understanding directions (81). A complete list of his subtest scores on the WJ-III and Bateria are as follows (scores are reported as standard score/age equivalency/grade equivalency):

SubTest	WJ-III	Bateria
Letter-word identification	100/6-3/1.0	106/6-7/1.3
Reading fluency	98/6-1/K.8	__/<6-0/<1.2
Story recall	__/<2.0/<K.0	__/<2.6/<K.0
Understanding directions	74/4-5/<K.0	81/4-8/<K.0
Calculation	105/6-5/1.1	_____
Math fluency	84/5-7/K.3	_____
Spelling	97/6-1/K.8	125/7-7/2.0
Written fluency	85/5-4/K.2	__/<6.0/<1.2
Reading comprehension	99/6-2/K.9	93/6-0/K.8
Applied problems	87/5-5/K.1	92/5-9/K.6
Written samples (expression)	107/6-7/1.3	108/6-8/1.3
Word attack (decoding)	116/7-4/2.0	106/6-10/1.7

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report, Fernandez omits the subtest scores and fails to list those subtests where Student failed to obtain a correct answer.

Picture vocabulary	94/5-5/K.1	74/3-4/<K.0
Oral comprehension	82/4-1/<K.0	73/3-4/<K.0
Reading vocabulary	__/<6.0/<K.0	__/<6.0/<1.2
Quantitative concepts	88/6.0/K.3	85/5-5/K.3

42. Student's cluster scores in the WJ-III demonstrated relative weakness in the areas of math reasoning, oral expression and listening comprehension with strength in the area of word attack (decoding) skills. On the Bateria, Student also demonstrated areas of relative weakness in oral expression and listening comprehension plus reading comprehension. His area of relative strength on the Bateria was also in word attack skills. On both tests, Student had problems recalling and restating story details and understanding multi-step directions. On the Bateria, he had problems orally completing a sentence frame and naming/labeling items. On the WJ-III, Student was able to orally complete a sentence frame that made sense, could write simple sentences to describe a picture, and could name and label basic items. Student's cluster test results were (standard scores/age equivalency/grade equivalency):

Cluster Test	WJ-III	Bateria
Basic reading skills	108/6-8/1.4	113/6-10/1.5
Reading comprehension	94/6.1/K.8	84/5-7/<K.7
Math calculation skills	103/6-4/1.1	_____
Math reasoning	83/5-6/K.2	86/5-7/K.4
Written expression	108/6-7/1.3	106/6-6/1.4
Oral expression	75/3-10/<K.0	54/2-9/<K.0
Listening Comprehension	78/4-3/<K.0	70/4-0/<K.0

43. Cervantes had graded Student's performance on his report card as a "2+" which is between "good" and "some progress" in all areas. Cervantes reported that

Student had passed his addition and subtraction math test, was beginning to independently write sentences, and was more attentive during class. Although he was continuing to refuse to perform certain tasks, Cervantes felt that Student was capable of doing the work.

44. Fernandez concluded that Student's areas of deficits were oral expression and listening comprehension as indicated in the WJ-III and Bateria as well as in the speech and language evaluation. Cervantes reported that she felt that Student was making progress academically and was functioning approximately six months below grade level.[11] Fernandez opined that that Student's deficit areas did not appear to be significantly impacting Student academically.

Social/Emotional Development and Functioning

45. Student was interviewed by Fernandez. Student stated that he lived at home with his parents, brother, and his dog, Negro. At home, he does chores to help his mother. At school, he can do the work, but he admits he does not want to work, as he would rather read books. Student states that he would like to be a teacher. When asked to give three wishes, Student wanted a globe, a toy and a book.

The GARS

46. The GARS is a rating scale used to assess individuals aged three through 22 for the probability of autism. The GARS contains an autism quotient composed of three subtests, stereotyped behaviors, communication, social interaction, and developmental. The GARS contains 42 questions where an individual lists the frequency of certain behaviors and traits found in autistic persons (i.e. "repeats (echoes) words

[11] Cervantes testified that many typically developing children in the class were functioning at the same grade level as Student.

verbally or with signs"), and "key questions" addressed to certain behaviors. Scores are calculated for the index and subtests on a probability of autism as "unlikely" (index score of 69 or less, subtest scores one to three), "possibly" (index scores of 70 to 84, subtest score of four to six), or "very likely" (index score of 85 or higher, subtest score of seven and higher). There is an additional section for parents/caregivers to give their input regarding areas of social interaction and communication, and symbolic or imaginative play. The GARS was completed by Parents, Cervantes, and Estupinan, Student's prior year teacher. None of the responders filled out the "key questions" section. Fernandez never requested that they fill out the section after the forms were returned with the section blank. Cervantes testified that she believed that section was never given to her.

47. Parents reported that Student frequently ate specific foods and refused to eat what most people usually will eat; did not ask for things he wants; used pronouns inappropriately; became upset when routines changed; and responded negatively or with temper tantrums when given directions, commands, or requests. Parents' responses resulted in an autism index of 81, in the tenth percentile and yielded a "possibility" of autism. The subtest scores from Parents were eight for stereotyped behaviors which had a "very likely" probability and were in the 25th percentile; eight for communication which also fell in the "very likely" range and 25th percentile; and five for social interaction which had a "possibility" for autism and was in the third percentile.

48. Cervantes reported that Student frequently failed to initiate conversations with peers and adults; did not imitate others when imitation was required or desirable (i.e., games or learning activities); and was withdrawn, aloof or standoffish in group situations. Cervantes' responses resulted in a standard score of four for stereotyped behaviors which was in the second percentile and "possibility" range; seven for communication which was in the 16th percentile and in the "very likely" range; and a six in social interaction which is within the ninth percentile and the "possibly" range.

Student received an autism index in the "possibly" range with a standard score of 72 which fell in the third percentile.

49. Estupinan's responses yielded an autism index score of 64 which is in the "unlikely" range. She scored Student at a standard score of three for stereotyped behaviors which was within the first percentile and the "unlikely" range; six for communication which was in the ninth percentile and the "possibly" range; and four for social interaction which was in the second percentile and the "possibly" range. Estupinan failed to note any behaviors to be on a frequent basis. Although, she noted that she sometimes observed Student not asking for things he wanted, did not initiate conversations with peers and adults, used gestures in lieu of speech to obtain objects, and was sometimes aloof, withdrawn or standoffish.

The CARS

50. The CARS is a 15 item behavior rating scale developed to identify children with autistic-like characteristics and to distinguish them from developmentally handicapped children without autism syndrome. The 15 items are: relating to people, imitation, emotional response, body use, object use, adaption to change, visual response, listening response, taste, smell, touch response and use, fear or nervousness, verbal communication, nonverbal communication, activity level, level and consistency of intellectual response, and general impressions. The CARS was completed by Fernandez interviewing the Parents on March 10, 2010 and Cervantes the following day.

51. Parents reported that Student liked to be "cuddled" and did not like to be alone. He talked and played with his cousins. Although he did not imitate behaviors at first, Student did now. He exhibited emotions when he is sad or angry. Parents reported that Student played appropriately with toys. Student did pay attention to things that interested him, and he would throw a tantrum if asked to stop a preferred activity. He was a picky eater. Student is scared of the dark and did not like to go down the house

stairs alone. He was not sensitive to sounds. Student had delayed speech and had a hard time understanding concepts. Fernandez scored Parents' responses with a total score of 22 which fell within the "non-autistic" range.

52. Cervantes reported that Student was a shy child who did not overall speak in sentences. She reported his behavior as "good." She described Student as "calm," but he will "tense up" when frustrated, although not extreme. She related that Student talked to two of his peers and to her about different things. Although he appeared bothered by changes in the classroom at first, that was now not a problem. Initially he did tend to "stare into space," he did not exhibit that behavior presently. Student did not appear sensitive to sounds and is not a picky eater. Student has told her that there was a monster at his home window and in the cafeteria. Student had difficulty expressing himself and tended to respond with one or two word responses. He was restless in class but presently stays in his seat. Cervantes felt that Student's intellectual functioning may be slightly below a typical child of the same age. Fernandez scored Cervantes' responses as yielding a total score of 18, which is in the "non-autistic" range.

The SPM

53. The SPM is a rating scale designed to assess children ages five through 12 in the areas of social participation, planning and ideas, and sensory processing. The scales were completed by Parents and Cervantes and resulted in a total score of 62 for Parents and 51 for Cervantes. Parents' score was within the interpretive range of "some problems," and the teacher score was within the "typical" range. Fernandez concluded that the 11 point difference indicated that Student exhibited more problems at home than in school. The Home Form completed by Parents resulted in the following scale scores:

Scale	T-Score	Interpretive Range
Social Participation	70	Definite Dysfunction
Vision	54	Typical
Hearing	63	Some Problems
Touch	47	Typical
Body Awareness	66	Some Problems
Balance and Motion	59	Typical
Planning and Ideas	72	Definite Problems

The Main Classroom Form yielded the following scale scores:

Scale	T-Score	Interpretive Range
Social Participation	72	Definite Dysfunction
Vision	57	Typical
Hearing	52	Typical
Touch	53	Typical
Body Awareness	42	Typical
Balance and Motion	51	Typical
Planning and Ideas	70	Definite Dysfunction

The BBRS-2

54. The BBRS-2 is a rating scale designed to identify children, ages four to 18, who have behavioral problems and the severity of the problems. The parent and teacher forms were filled out by Parents and Cervantes. Parents rated Student in ability deficits (cognitive and academic) as in the "elevated level of concern" while Cervantes rated him in that category as "typical." Parents rated Student as "moderate level of concern" in the areas of disruptive behavior, attention and impulse control problems, and weak self-confidence. Parents rated him as "typical" in the areas of emotional problems, social

withdrawal, and physical deficits. Cervantes rated Student as "typical" in all areas except social withdrawal where she rated him as "moderate level of concern." Fernandez concluded that Student appears "to exhibit more traits that are consistent with being shy or disinterested in others at school than at home," and that he exhibits problem behaviors-rebelliousness, attention deficits, cognitive difficulties, academic difficulties, and dependency- to be more apparent in the home.

Teacher and Parent Interviews

55. Parents reported that transitions were difficult for Student who would throw lengthy temper tantrums when asked to stop a preferred activity. When upset, he "whimpers" for hours with tears as well as tensing up and being rigid. Student did play well with his cousins. He had friends and interacted appropriately with them. Parents voiced concerns with his difficulties processing language and communicating.

56. Cervantes reported that she had noticed that Student had begun to initiate conversations with her on a daily basis. Recently, Student had begun to play with his peers. She had observed him initiate conversations with a female classmate by tugging on her blouse to get her attention. He appeared to be a perfectionist and was reluctant to take risks. He still refused to take spelling tests and would stop if he got a word wrong. When frustrated, he would bang on his desk. He was able to sequence and express himself when visuals are utilized. When reading, he did not want to read words with "r" or multi-syllable words as he appeared afraid of making mistakes.

Assistive Technology

57. Although the Assessment Plan called for an assistive technology evaluation, none was performed. Fernandez merely stated: "Based on the review of existing data, including information, observations from parent and classroom teachers, there are no identified needs for assistive technology or services."

RECOMMENDATION FOR ELIGIBILITY FOR SPECIAL EDUCATION

58. The multidisciplinary team report then reviewed three eligibility categories which Student may qualify for special education and related services. Fernandez, relying on Miller's assessment, merely stated that Student "appears to continue to maintain eligibility in terms of Speech and Language which can address [Student's] present deficits." The other two eligibility categories reviewed were autistic-like behaviors and specific learning disability.

Autistic-like Behaviors

59. California Code of Regulations , title 5, section 3030, subdivision (g) sets forth seven behaviors for eligibility for special education under the category of autistic-like behaviors. A child meets the eligibility under autistic-like behaviors if he or she exhibits any combination of the behaviors listed. In her analysis of whether Student was eligible under this category, Fernandez listed each of the seven criteria and her findings as to each. These seven behaviors are:

(1) *An inability to use oral language for appropriate communication.* Fernandez concluded that Student "is able to use oral language appropriately." She also noted that Student had recently started initiating conversation with his teacher and peers, plus Student scored within the "low average" range on the TAP-2.

(2) *A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.* Fernandez noted that although shy, Student did play with a small group of peers. Although Cervantes initially noted that Student did not interact with peers, she had recently related that Student had been playing

and interacting more with peers. She also noted that Parents reported he interacts with his cousins and has friends.

(3) *An obsession to maintain sameness.* Fernandez noted that Student "does have difficulty with transitioning away from a preferred activity." Parents reported that he often throws a tantrum when pulled away from a preferred activity. Fernandez concluded that such was not unusual for some children.

(4) *Extreme preoccupation with objects or inappropriate use of objects.* Fernandez found no evidence that Student had an extreme preoccupation with objects.

(5) *Extreme resistance to controls.* Acknowledging that Student was defiant, stubborn and would throw tantrums at home, Fernandez noted that the BBRS-2 indicated that such were not as evident at school. She concluded that Student's behaviors at home were motivated by his attempting to manipulate the situation as he seemed to engage this behavior when he wanted to continue a preferred behavior.

(6) *Displays peculiar motoric mannerisms and mobility patterns.* Fernandez noted that Student did not "appear to exhibit any 'tics' either verbal or nonverbal."

(7) *Self-stimulating, ritualistic behavior.* Fernandez noted that Student did not appear to exhibit this type of behavior.

60. Fernandez concluded: "This student **does not meet** the state eligibility criteria to qualify for special education services under the handicapping condition: Autistic-Like Behaviors (Ed. Code 3030 (g))." (Emphasis in Original.)

Specific Learning Disability

61. A specific learning disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read,

write, spell, or perform mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more academic areas. The term "specific learning disability" includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. That term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (Ed. Code, §56337 subd. (a); Cal. Code Regs., tit.5, § 3030, subd. (j).) The term "basic psychological processes" includes attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization, and expression. (CCR, tit. 5, § 3030, subd. (j)(2).)

62. In concluding that Student does not qualify for special education and related services under the SLD category, Fernandez concluded:

> [Student] appears to have two areas of deficits: Oral Expression and Listening Comprehension. These two areas were consistently low in both English and Spanish. As reported by Mrs. Cervantes, in the classroom, [Student] appears to be making progress in all areas: He appears to be performing about 6 months below grade level. He is reading about 29 words per minute (level 2.2) and 8 words per minute (level 6.2). In writing, he is beginning to independently write sentences. In math, [Student] recently passed the addition and subtraction test. This, in and of itself, does not indicate [Student] is functioning significantly below grade level in the classroom. *At this time the areas of deficit do not appear to sufficiently be impacting [Student]*

academically to say he is a specific learning disability.

(Emphasis added.)

THE MAY 7-14, 2010 IEP MEETING

63. The IEP team reconvened on May 7 and 14, 2010, to discuss the results of the assessment. On May 7, 2010, Miller presented her report and recommended that Student continue to be eligible for special education and related services under speech and language because of his deficits in expressive language. Fernandez presented her report and noted several clerical errors. Fernandez noted that the errors had no effect on her recommendations as to eligibility. She presented a revised report which included corrections to the scoring of several academic achievement tests in the area of written expression. Cervantes reviewed Student's ongoing problem behaviors which included shutting down, ripping class work and books, and throwing objects. At the continuation of the meeting on May 14, 2010, Cervantes expressed her main concern as Student's failure to complete tasks. Although she stated there were recent improvements, Student's behavior continued to be "inconsistent." She also reported that Student continued to have difficulty socially with peers including engaging in simple conversations. Cervantes then questioned the results of the CARS, which had been based on an interview in lieu of the teacher completing a questionnaire. Cervantes stated that not all questions related to Student. Fernandez replied that Cervantes never mentioned this to her during the interview as well as the teacher's concerns related to social skills. Cervantes responded by pointing out responses she felt related to her concerns about the level of Student's social skills. Cervantes also stated that the progress that she had described that Student had shown was only "minimal." Parents did not agree with the District team's assessment and requested that an Independent Education Evaluation (IEE) be conducted in the areas of psycho-education, speech and language, assistive technology, vision, occupational, and functional behavior.

APPROPRIATENESS OF THE MULTIDISCIPLINARY ASSESSMENT

Contentions of the Parties

64. The District contends that its multidisciplinary team's assessment was appropriate to assess Student from a functional, developmental, and academic perspective. The team used a variety of assessment tools and strategies, did not use a single measure or assessment as the sole criteria for determining eligibility for special education services, and used technically sound instruments that may assess cognitive behavior, physical or developmental factors. All test materials were valid and reliable and administered in accordance with test manuals.

65. The Student contends that the multidisciplinary assessment was inappropriate because (1) the District's team failed to test in all areas of suspected disability which included auditory processing, attention, and assistive technology; (2) failed to appropriately administer standardized tests; (3) failed to use appropriate statutory standards in analyzing whether Student was eligible for special education services; and (4) failed to adequately assess Student in the areas of autistic-like behaviors and speech and language.

Expert Witnesses

66. The District's expert witness, Kidd, is presently a school psychologist with the District. She received a B.A. in special education with an emphasis in emotional/behavioral disorders from Arizona State University in 1997. She was enrolled in a psychology masters program at Dominican University and completed her M.S. in psychology from San Francisco State University in 2003. Prior to joining the District in 2010, she was a classroom and special day class teacher from 1997 to 2000 and a school psychologist since 2000. She was a consultant to Fernandez during Student's assessment. She holds California credentials in special education, multiple subjects, pupil

personnel services-counseling, pupil personnel services-school psychologist, and eligibility-administrative. Kidd's opinions are based on her review of the records and assessment reports as well as her consultations with Fernandez during the assessment process.

67. Robert Goode Patterson was called as Student's expert witness. Patterson is an extraordinarily well-qualified expert whose multiple degrees include a Psy.D. in psychology and family therapy, a master's degree in developmental psychology, and a master's degree in education. He holds numerous California credentials including general elementary, general secondary, pupil personnel services, and school psychology. He is both a licensed psychologist and a licensed educational psychologist. Patterson was a classroom teacher, administrator, school psychologist, and college instructor in addition to being in private practice as a psychologist. Patterson is also a diplomate from the American Board of School Neuropsychology and the International College of Professional Psychology, which is recognized by the American Medical Specialties Board. Since 1991, he has maintained a private practice and since 1994 he has been certified by California as a nonpublic agency. Patterson's opinions were a result of his review of Student's records and the 2010 District assessment. He has not personally assessed or observed Student.

Failure to Assess in all areas of suspected need

ATTENTION

68. Student contends that there were ample signs that Student should have been assessed for attention problems. One of the concerns expressed by Student's teacher, Cervantes, was that Student was unable to complete class work and would "zone out" during class. She reiterated this at the December 7, 2010 IEP meeting. On the BBRS-2, Parents noted that Student was hyperactive, restless, could not finish tasks, and

had a short attention span.[12] The assessment team was aware that Cervantes had moved Student away from his peers to a location next to her because of Student's attention problems, which met with limited success. During the administration of the academic testing, Angeles reported that Student was uncooperative at times, fidgety, restless, and often distracted.

69. Patterson opined that based on this information, the District assessor possessed sufficient information as to suspect that Student may have an attention deficit. Patterson did not believe that the BBRS-2 was sufficient to assess attention problems as it is a general assessment tool which is designed to determine what specific areas need further testing. Patterson stated that a test designed to evaluate possible attention deficits, like the Connor Rating Scales, should have been administered.

70. The District contends that the assessment "is complete and whole, including the reasons for the assessment." (District Closing Brief, p. 2.) Fernandez testified that Student did not demonstrate any evidence of attention issues as he scored in the average range on the behavior rating scales (BBRS-2). The actual scores of the Parental scale were in the "moderate level of concern" range for attention and impulse control. On the other hand, Cervantes' ratings on the BBRS-2 attention questions were that Student does not or only to a slight degree manifest such behaviors.[13] Fernandez

[12] On the rating scale, Parents rated as "very large degree" the following: attention span not increased by punishment or reward; cannot finish what he or she starts, jumps to something else; and hyperactive and restless. Parents rated short attention span and easily distracted as "large degree."

[13] Cervantes' rated Student as only "slight degree" in easily distracted; short attention span; cannot finish what he or she starts, jumps to something else; and

failed to observe any attention issues during her classroom and school yard observations. Based on these factors, Fernandez did not feel that any more testing was required as to attention issues.

71. One of the main concerns that triggered the request for assessment was Student's "zoning out" during class plus his failure to complete assignments. Thus, attention was an area of concern at the time that the assessment request was brought forth at the December 7, 2009 IEP meeting. The assessment team was aware that potential attention problems were present in class as Cervantes moved Student away from distractions to be near her. Fernandez did screen for attention issues by administering the BBRS-2. But it is apparent that the teacher ratings appear to differ from the information she provided at the IEP meeting. Parents' responses did indicate that Student's attention may be a suspected problem area. Thus, the District team should have further assessed in the area of attention deficit.

AUDITORY PROCESSING

72. Student contends that the testing demonstrated that Student displayed a deficit in auditory processing such that the District should have conducted further testing as auditory processing was a suspected area of deficiency. As discussed in paragraph 37 above, Student scored zero correct answers on two tests and one correct response on the English version of the TAPS-3-phonological segmentation, auditory comprehension, and auditory reasoning (one correct answer). On the Spanish version (TAPS-3:SBE), Student had zero correct answers in the same subtests. Fernandez, following the manual instructions, awarded scaled scores of one, five, and five on the English subtests and four, six and eight on the Spanish subtests. Fernandez omitted any

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hyperactive and restless. She listed attention span not increased by punishment or reward as "not at all."

mention of the raw scores in her written report or oral presentation. Patterson concluded that these subtests should be taken into account by the examiner in interpreting scores. Because the manual calls for assigned scaled scores in lieu of Student's true scores, Patterson opined that the index scores fail to give a true measure of Student's skills in auditory processing. Patterson testified that the best practices require an assessor to do further testing in these areas to determine whether these areas were specific areas of deficit.

73. The District contends that Fernandez followed the manual and testing protocols. But, this misses what Student is contending. Patterson does not dispute that the District team followed the test protocol and manual in its administration and scoring. What he is saying is that it is best practices for the assessor to take into account where an examinee fails to score a correct answer in a test and to consider if the reason for the zero or low raw scores may indicate an area of need. Also, Patterson opined that it is best practices to include the information of zero raw scores. Failure to do so gives a false impression of a child's skills. The ALJ finds that Patterson's opinion is credible that an examiner must interpret test results and their meaning, rather than merely follow a protocol, and that further testing in this area was needed.

ASSISTIVE TECHNOLOGY

74. Student contends that the District failed to assess the possible need for assistive technology. The only mention of assistive technology is one sentence which merely states that in a review of the existing data, Student does not exhibit a need for assistive technology or services. There is no further explanation of how this conclusion was made. Patterson opined that the District may not have assessed in this area whatsoever. The assessment report fails to contain sufficient information as to whether Student requires assistive technology and services as the report omits any information

as to how the assessors reached their opinion that Student did not require such services. Thus, the District has failed to meet its burden of proof.

Failure to Appropriately Administer Standardized Tests

BATERIA AND WJ-III

75. Student contends that the District assessors failed to appropriately administer the Bateria as it was administered on two occasions because Student refused to complete six subtests.[14] Patterson opined that because Angeles had attempted to administer these subtests on March 5, 2010, Student's scores on the March 26, 2010 administration of the six subtests would be inaccurate due to "practice effect."[15] Fernandez and Kidd disagreed with Patterson in that Student never attempted to take any of the six subtests at all. Angeles testified that Student completely refused to do these tests. Because Student did not attempt to take the subtests which were later retested, the March 26, 2010 administered subtests were not subject to the "practice effect."

76. Student received zero raw scores on two subtests of the WJ-III (reading vocabulary and story recall) and on three Bateria subtests (story recall, reading fluency, and reading vocabulary). Fernandez omitted mention of the zero raw scores in her written report. The District contends that these tests were administered appropriately as the assessor followed the test protocols and manuals. Patterson testified that best

[14] These subtests were written fluency, reading comprehension, applied problems, written samples, word attack, and picture vocabulary.

[15] "Practice effect" is when past experience in taking a test has an effect on taking the same test again. It usually results in a higher score than normal on the second administration and can be more pronounced if the time interval is short.

practices require that the zero raw scores be disclosed and that the assessor analyze the effect of the raw scores on the cluster scores and whether a true picture of Student's academic abilities has been accurately reflected in these scores. Patterson opined that the assessor should have administered additional tests to measure Student's skills in these areas so as to receive a truer picture of his abilities. The ALJ finds that Patterson's opinion is credible and that the assessor should have analyzed the effects of the raw scores on the cluster scores and determined whether further testing was required so as to enable the IEP team to have the most accurate picture of Student's levels.

WISC-IV

77. Student contends that the District assessors' choice of the WISC-IV, which is a language based measure, was not appropriate for measuring Student's intellectual functioning as he suffers from a language disorder. Student also contends that Fernandez failed to appropriately take into account Student's "severe" discrepancy in Student's subtest scores on verbal comprehension (81) and perceptual reasoning (121) on the Spanish version. Student's other subtests also had a significant scoring discrepancies from his verbal comprehension score ranging from 24 to 31. Student further contends that because of Student's language deficits, he should have been administered a nonverbal cognitive test to more accurately measure his intellectual functioning. The District's position is that the assessment tools used were valid and reliable, and that Student's discrepancies on the subtest resulted from his language problems.

78. Patterson testified that based on the results of Student's past and present speech and language evaluations, he demonstrated a significant delay in language skills which should have led assessors to administer a nonverbal cognitive measure to obtain a truer picture of Student's intellectual functioning. He also opined that the WISC-IV results which resulted in large discrepancies between the verbal comprehension and the

other subtests should have been further explored using a nonverbal measure such as the Comprehensive Test of Nonverbal Intelligence (CTONI); Test of Nonverbal Intelligence Third Edition (TONI-3); Cognitive Assessment System, or the Kaufman Battery for Children (KABC). Patterson cited the base rate for these discrepancies which ranged from a zero percentage of children in the testing group which have also shown such a discrepancy (40 points) to two and four tenths percent (26 points) to 12 percent (14 points) which calls for further testing to garner a true picture of Student's cognitive abilities. District's expert, Kidd, agreed that the discrepancy analysis was important. She testified that it is important to see why the gap is occurring as there may be a processing disorder. Kidd opined that further testing was not in necessary because the assessor can take into account that Student was a second language learner and had language problems, which explained the score differentials.

79. The ALJ finds that Patterson's opinion is more credible. Fernandez did not explain the importance of the "base rate" and why it was relevant to analyzing Student's WISC-IV results. It is obvious that at minimum, the District assessor should have complemented the WISC-IV with a nonverbal cognitive functioning measure to obtain an accurate picture of Student's intellectual functioning level.

SPEECH AND LANGUAGE ASSESSMENT

80. Student contends that the speech and language evaluation was not appropriate because (a) Miller failed to observe Student in Cervantes' class; (b) failed to interview Parents and Cervantes; (c) inaccurately scored the TOPL; and (d) should have used a different testing mechanism which did not use a heavy language component. The District avows that Student has failed to controvert Miller's testimony in that he failed to present a speech and language pathologist.

81. The assessment was a team effort. Miller and Fernandez testified that team members consulted with each other and the assessment was a team effort. Thus, Miller

had the benefit of the interviews conducted by Fernandez and the observations of other team members including Fernandez and the behavior specialist. Miller also used informal testing measures in evaluating the accuracy of the test results based on her eight months working as Student's speech therapist. Additionally, she had been working as Student's speech pathologist since August 2009 and would be familiar with him. Thus, there is no showing that Miller failed to take into account the interviews and observations of other team members.

82. As to the TOPL scoring, Miller indicated that the examiner is to take into account whether the child understands indirect language and to understand emotions, which in fact she did do. Student offered no rebuttal that the scoring method used by Miller was incorrect. Miller was a knowledgeable and credible witness. Additionally, Patterson opined that the TOPL was not an appropriate testing measure because it appeared that Student's pragmatic language and expressive language deficits interfered with his ability to respond to many of the exercises. Patterson recommended that a measure without a heavy language component should have been used to measure Student's pragmatic skills. Patterson cited the Kaufman Assessment Battery for Children-II and the Developmental Neuropsychological Assessment-II as examples of such tests that would be more appropriate. Miller was a knowledgeable and credible witness. The District has met its burden in demonstrating that the TOPL was appropriately administered.

Failure to Utilize the Appropriate Standard for Analyzing SLD

83. Student contends that the District assessment team failed to use the appropriate standard in analyzing whether Student was eligible for special education and related services under the category of SLD. The District contends that it used the appropriate standards under California law.

84. Patterson appeared not to take exception to the criteria that Fernandez used in analyzing whether Student qualified for special education under the category of SLD, although he did disagree with her conclusion and her failure to specifically list the criteria factors of SLD in her analysis. Fernandez did take into account the factors listed in paragraph 61 and reviewed Student's testing results and the classroom teacher's opinions as to the level of Student's class work (i.e., passing the addition and subtraction test, being in the mid-range level of the class in writing). Thus, the District did not utilize an inappropriate standard in analyzing whether Student qualified under the SLD category.

Failure to Appropriately Assess Student in the area of Autistic-Like Behaviors

85. Student contends that the District assessment team (a) inappropriately administered the GARS as the teacher raters failed to complete the key question section; (b) failed to accurately score the CARS; and (c) failed to administer further tests. The District contends that the tests were administered appropriately.

86. The GARS comprises a rating scale and several other pages including a first page with identifying information, score summary, interpretation guide and score profile; the second through fourth pages contain the ratings questions; page five is a parent interview sheet followed by key questions on the sixth page; and the seventh page is reserved for notes by the examiner. The parent interview section requests information on the child's first three years, social communication language, and abnormal functioning in social interaction, language used in social communication and symbolic or imaginative play. The "key questions" section comprises 11 questions which appear to be related to the parent interview requesting information to clarify information requested in the parent interview. The questions ask what behaviors cause the responder to think the child has autism; when did these behaviors first occur; do the

behaviors occur in all settings; could the behaviors have another cause; by who and when was the child evaluated by a professional who can make a diagnosis; list other assessments; whether the impairments noted are symptomatic of autism; severity of the symptoms; and other related information. By a reading of these questions, it is clear that the questions are addressed to parents and not the teacher raters. For instance, teachers would not have sufficient information to respond to most of the information asked. Student produced no evidence to show that the key questions were designed to be responded by anyone other than the parents. Even had Cervantes and Estupinan responded to the key questions, they would have been unable to answer as they would not have sufficient knowledge to respond. Although Parents failed to also respond to the "key questions," the information called for in these questions were covered by interviews and the medical review by the nurse.

87. The CARS was administered by interview where Fernandez recorded responses and then scored the responses. Student contends that that Fernandez's scoring was inaccurate and that she failed to consider information provided at earlier IEP meetings. Mother testified that the ratings scales accurately reflected what she saw with her son. At the May 14, 2010 IEP team meeting, Cervantes questioned the results from the CARS, based on independent research she conducted, as she did not think all questions applied to Student and that she replied to the questions not comparing Student to others. At the hearing, Cervantes acknowledged that Student had made progress with his behaviors and socially but that the interview did not adequately reflect the limited degree of areas where she reported progress. Cervantes reported at the May 14, 2010 IEP meeting that Student had recently made improvements socially, academically, and behaviorally. Cervantes did voice ongoing concerns with his social abilities and characterized his recently improved interactions with peers as minimal. Fernandez took into account the information that was provided by Cervantes and based

on her professional training and experience scored the CARS based on the information as presented. The District has met its burden that the CARS was accurately scored based on the information possessed at the time.

88. Patterson opined that the further testing in the area of autistic-like behaviors was warranted. Patterson based his opinion on the results of the GARS and CARS, which were not conclusive and not designed to be the only indicators of possible autistic-like behaviors. The District assessor did not base her assessment solely on only the CARS and GARS. She also administered the SPM and BBRS-2; conducted interviews with parents and teachers, Cervantes, Hernandez, and Estupinan; consulted with colleagues and Kinder; the behavior specialist; and conducted observations of Student in class and on the playground. She analyzed each factor for the category taking into account all this information. Thus, the District has met its burden that it appropriately assessed in the area of autistic-like behaviors.

LEGAL CONCLUSIONS

1. The District contends that its February-March 2010 psycho-education assessment of Student was appropriate, such that it need not fund an IEE at public expense. As discussed below, the District failed to meet its burden of proving by a preponderance of the evidence that the February-March 2010 multidisciplinary team assessment was appropriate.

2. Under special education law, a parent or a public agency has the right to present an administrative complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE). (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006); Ed. Code, § 56501, subd. (a)(1)-(4).) OAH has the authority to decide the District's complaint.

3. As the petitioning party, District has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

4. In order to assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(l)-(4).) A school district must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) The proposed written assessment plan must contain a description of any recent assessments that were conducted, including any available independent assessments and any assessment information the parent requests to be considered, information about the student's primary language and information about the student's language proficiency. (Cal. Code Regs., tit. 5, § 3022.) Here, there is no dispute that the District complied with these requirements.

5. Assessments must be conducted in a way that: (1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do

academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment was adequate despite not including speech/language testing where concern prompting assessment was a deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

6. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 1) whether the student may need special education and related services; 2) the basis for making that determination; 3) the relevant behavior noted during observation of the student in an appropriate setting; 4) the relationship of that behavior to the student's academic and social functioning; 5) the educationally relevant health, development and medical findings, if any; 6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and 7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

7. A student may be entitled to an IEE if he or she disagrees with an evaluation obtained by the public agency and requests an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) In response to a request for an IEE, an educational agency must,

without unnecessary delay, either: 1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or 2) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].) Here, the District filed this matter to determine the appropriateness of its assessment.

WAS THE DISTRICT'S FEBRUARY-MARCH 2010 MULTIDISCIPLINARY ASSESSMENT OF STUDENT APPROPRIATE?

8. Student demonstrated by a preponderance of the evidence that the February-March 2010 multidisciplinary assessment had not been appropriate. The assessment had been requested by Student's classroom teacher, Cervantes, and his parents because of concerns that included problem behaviors, especially completing and destruction of his school assignments; problems communicating with peers and adults; lack of academic progress; "zoning out" during class; distractibility; and lack of social skills while dealing with peers. Pursuant to Factual Findings 5, 9, 13, 14, 23 through 63, and 64 through 78, although Student was assessed using a variety of assessment instruments, the assessment was not appropriate because for the following reasons:

a) The District assessment team failed to evaluate in a suspected area of disability, Other Health Impaired, due to Student's reported attention problems. There was no attempt to assess if Student may have an attention deficit disorder;

b) The District assessment team failed to properly take into account Student's zero raw scores in the TAPS-3 and TAPS-3:SBE. Since the zero raw scores

failed to give a true picture of Student's skills in this area, further testing should have been administered to develop an accurate picture of Student's skill level and to determine whether auditory processing was an area of need;

c) The District assessment team's Assistive Technology assessment was not appropriate because the assessment report failed to offer an analysis of the reasons for the team's conclusions;

d) The District assessment team should have reported and analyzed the effect of Student's scoring zero and one correct answer on the subtests of the academic achievement tests (Bateria and WJ-III) and their relation to the cluster scores and then conducted further testing to obtain an accurate picture of Student's academic levels. The importance of developing an accurate picture of Student's academic levels is to assist the IEP team in determining eligibility for special education including in the area of SLD and to measure academic progress; and

e) The District testing in the area of intellectual functioning was not appropriate in that there was no administration of a nonverbal cognitive functioning measure in light of the severe discrepancy in the scores between verbal comprehension and perceptual reasoning indexes and the large discrepancies between verbal comprehension and the other indexes. This was important to obtain an accurate picture of Student's intellectual functioning level to assist the IEP team to decide eligibility categories and to assist in determining an appropriate IEP.

ORDER

The District's request for a finding that the February-March 2010 multidisciplinary psycho-education assessment was appropriate is denied. The District shall provide

Student with an IEE at public expense in the areas of assistive technology and psycho-education, except in the area of speech and language.

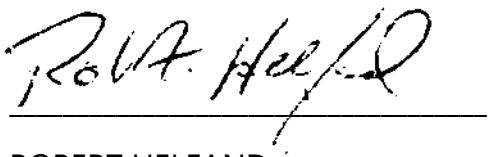
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. The Student prevailed on the only issue that was heard and decided in this case.

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 ninety (90) days of receipt.

Dated: December 27, 2010



ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings