

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARDEN GROVE UNIFIED SCHOOL
DISTRICT,

v.

STUDENT.

OAH CASE NO. 2010050822

DECISION

The due process hearing in this case convened on August 24, 25 and 30, 2010, before Timothy L. Newlove, Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH), State of California.

S. Daniel Harbottle, attorney at law from the Harbottle Law Group, represented the Garden Grove Unified School District (Garden Grove or District). Sarah Young, attorney at law from the Harbottle Law Group, attended the due process hearing. Dr. Gary Lewis, District Assistant Superintendent, Office of Special Education, also attended the hearing.

Miho Murai, attorney at law, represented Student at the due process hearing. Rosa K. Hirji, attorney at law, also represented Student who attended the due process hearing for part of the day on August 24 and 25, 2010, and for the entire day on August 30, 2010. Student's Foster Mother attended the hearing for part of the day on August 24 and 30, 2010. Hugo Weinstein, a Certified Court Interpreter, provided English to Spanish interpretation services for Student at the hearing.

On May 26, 2010, the District, through its attorney, filed with OAH a Request for Due Process Hearing. On June 23, 2010, OAH granted a continuance of the initially

scheduled hearing dates in the case. The continuance tolled the 45-day time period for issuance of a decision in the matter.

At the close of the hearing, the parties agreed to a briefing schedule. On September 10, 2010, the attorneys representing both the District and Student submitted closing briefs. The ALJ marked the District's brief as Exhibit D-27, and Student's brief as Exhibit S-40, and closed the record.

ISSUES

The issues in this case concern assessments of Student performed by the District. In particular, the issues are: (1) whether the psychoeducational evaluation performed by Griselda Flores, School Psychologist, was appropriate, and (2) whether the speech-language assessment performed by Cristian Paredes, Speech-Language Pathologist, was appropriate.

CONTENTIONS

Student in this case is an adult from a foreign country where he received only five years of schooling in his youth. In April 2010, after Student had attended Garden Grove High School for 13 months, the District completed for him an initial evaluation which included a psychoeducational assessment and a speech-language evaluation. Subsequently, an individualized education program (IEP) team determined that, despite low test scores in all areas, Student was not eligible for special education. Student disagreed with the two assessments and requested that the District fund independent educational evaluations. The District promptly filed for due process seeking an order that the challenged evaluations were appropriate.

Relying principally upon the opinion of a Clinical Neuropsychologist, Student makes various charges against the appropriateness of the challenged assessments. Student contends that the District failed to properly assess his level of intellectual

functioning. He contends that the District failed to fully evaluate his psychological processing, including areas related to attention, memory and executive functioning. He contends that the District failed to fully evaluate his receptive and expressive language abilities. He contends that the District failed to seek relevant information from his Foster Mother, biological parents, social worker, and prior school records. He contends that the District engaged in cultural bias by presuming that his overall low test scores are a result of his limited educational background.

Based upon the following Factual Findings and Legal Conclusions, this Decision determines that the challenged psychoeducational and speech-language assessments were appropriate. Both assessments presented a comprehensive picture of Student and satisfied the numerous and overlapping requirements for a proper evaluation.

FACTUAL FINDINGS

THE STUDENT

1. Student is a young man who will turn 19 in December of this year. He is from a small rural village in Honduras. Spurred by conflicts with his father, Student came to the United States in June 2008, when he was 16 and a half years old. For eight months, he resided in Phoenix, Arizona, at a group home for immigrant youth. In March 2009, he passed into the care of a Foster Mother who resides in Garden Grove, California. Student continues to reside with his Foster Mother.

2. The parties provided only a sketch of Student. He is short and slightly built. He is timid and reticent to speak. He is polite and cooperative. He is in good health and active physically. He likes cars and wants to become a mechanic who works on custom vehicles. His family remains in Honduras and each Saturday he calls his mother.

3. Student has received a limited amount of schooling. His village in Honduras had seven to 10 homes. The children in the village attended school in a single

classroom with one teacher. Student attended this school for five years from ages six to 11. At age 11, Student left school to work in the fields with his father. Five years later, Student received schooling at the group home in Arizona. However, due to fear and uncertainty about his future, Student paid little attention to the group home instructor.

4. Student's Foster Mother testified at the due process hearing. She is fostering five immigrant youth in her home. Several foster children, including Student, are from Honduras. She stated that she has a strong relationship with Student whom she treats like a son. She communicates with Student in Spanish. She described Student as shy and respectful. She believes that Student needs special education assistance from the District. She thinks that he has trouble processing and retaining information. She also thinks that Student has trouble concentrating on tasks. Frequently, she has asked Student questions about what she has said or what occurred at school, and he has not answered. She noted that Student studies two to three hours a day, and compared to her other foster children, he must put forth a greater effort to learn schoolwork.

GARDEN GROVE HIGH SCHOOL

5. In early March 2009, his Foster Mother enrolled Student at Garden Grove High School which is part of the District's system of schools. Based upon his age, which at the time was 17 years and three months, the District placed Student in the eleventh grade. The District also informed his Foster Mother that Student would attend 12th grade at Garden Grove High, for the 2009-2010 school year, but that, thereafter, Student must enroll in an alternative educational program in order to earn credits for graduation from high school.

6. Upon his enrollment at Garden Grove High, Student was a Limited English Proficient (LEP) child which means that he did not speak English and he was not able to perform ordinary classroom work in English. (Ed. Code, § 306, subd. (a).) In California, upon the initial enrollment of an LEP child, and annually thereafter, a school district

must assess the pupil's English language skills. (Ed. Code, § 313, subd. (c).) This assessment is called the California English Language Development Test (CELDT) which measures an LEP child's English skills in the areas of listening, speaking, reading and writing. (Ed. Code, § 60810, subd. (b)(1).)

7. On March 9, 2009, the District administered the CELDT to Student. At this time, Student's primary or dominant language was Spanish. He had little to no English language skills. On the CELDT, Student received raw scores of zero in each of the four domains, and scaled scores of 230 in listening, 235 in speaking, 320 in reading and 220 in writing. These scores placed Student at the Beginning level of English language proficiency. Based upon this level of proficiency, the District informed his Foster Mother that Student would enter a language development program at Garden Grove High.

8. Concurrently with the CELDT, the District also administered a Language Dominance Assessment (LDA) to Student. The LDA tests an LEP child's fluency in the areas of oral language, reading and writing in his or her native tongue. On the LDA, as regards his Spanish language skills, Student scored "non-literate" in the area of reading, and "limited fluency" in the areas of oral language and writing.

9. For the remaining portion of the second semester at Garden Grove High, Student took the following courses: two classes of English Language Development (ELD) Basics, ELD Basics Vocabulary, Foods 1, Algebra 1 and Physical Education. At the end of the semester, Student received an "F" in the language and Foods classes, a "C-" in Algebra, and a "B" in Physical Education.

10. California has established a Standardized Testing and Reporting Program (STAR Program) which assesses academic achievement. (Ed. Code, § 60640.) Under the STAR Program, each school district in the state must administer an assessment instrument called the California Standardized Test (CST) to pupils in grades two through

11. (Ed. Code, § 60642.5.) In spring 2009, Student took the CST and scored "Far Below Basic" in English-Language Arts and U.S. History, and "Basic" in Algebra.

11. Student attended summer school at Garden Grove High upon completion of the 2008-2009 regular school year. He took two ELD courses and received grades of "B" and "A-" in these classes.

12. For the 2009-2010 school year, Student attended 12th grade at Garden Grove High. During the first semester, he took the following courses: two ELD Basics classes, ELD Basics Vocabulary, Algebra 1, Exploratory Art and Physical Education. As grades, he received a "B" in ELD Basics and Exploratory Art, a "B-" in ELD Basics Vocabulary, a "C-" in Physical Education, and an "F" in Algebra.

13. In October 2009, the District again administered the CELDT to Student. In the domain of speaking, Student maintained the same scaled score of 235 which is in the low end of the Beginning range. However, in the other tested areas, Student showed significant progress in his English language skills. While remaining in the Beginning range, his scaled scores improved from 230 to 351 in listening, 320 to 489 in reading, and 220 to 445 in writing. Student's overall English language proficiency improved from 251 to 380.

14. During the second semester of 12th grade, Student took the following courses: two ELD Basics classes, ELD Basics Vocabulary, Exploratory Art, Computer Essentials and Physical Education. As grades at the end of the school year, he received an "A-" in Computer Essentials, a "B" in Exploratory Art, a "B-" in ELD Basics and Physical Education, and a "C" in ELD Basics Vocabulary. Overall, for 12th grade, Student earned a grade point average of 2.33, and he ranked 267 in a class size of 517. Student finished 12th grade having completed 75 course credits and needing 145 credits to graduate from high school.

15. Sara Martinez was Student's ELD Basics teacher in both eleventh and 12th grades. Ms. Martinez testified at the due process hearing. She has taught ELD classes at Garden Grove High since February 2004. She is fluent in both English and Spanish. Ms. Martinez described the ELD Basics class as a course for acquisition of English language skills. She stated that the grade level content of the ELD Basics class ranged from kindergarten to third grade. She described Student as conscientious and a hard worker who made progress in her class. He made significant gains in his English language vocabulary. His ability to converse also improved. Upon enrollment, Student spoke in one word sentences, but by the end of 12th grade, he was speaking in complete sentences. Ms. Martinez testified that, in her experience as an ELD instructor, immigrant pupils who come well-prepared from their native country are able to transfer skills in listening, speaking, reading and writing. She stated that, in her opinion, Student did not have the educational background to transfer such skills from Spanish to English.

16. In California, as a condition for receiving a high school diploma, a pupil must take and pass the California High School Exit Examination (CAHSEE) which tests in the areas of English-Language Arts and Mathematics. (Ed. Code, § 60851.) Student has taken but failed to pass the CAHSEE on six occasions. During the 2008-2009 school year, Student took the CAHSEE in March and July of 2009. For the 2009-2010 school year, Student took the CAHSEE in October and November of 2009, and in February and March of 2010. In March 2009, Student received scaled scores of 317 in English-Language Arts and Mathematics. A result of 350 is a passing score. Thereafter, his scores dipped until March 2010, when he received scaled scores of 326 in English-Language Arts and 323 in Mathematics.

THE INITIAL ASSESSMENT AND REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

17. On February 16, 2010, the attorney representing Student sent a letter to the Principal of Garden Grove High. The letter requested that the District perform an assessment of Student to determine whether he was eligible for special education and related services. The letter stated, in part: "I am concerned with (Student's) academic progress, particularly with respect to his speech and language needs." The letter also requested that the District perform a bilingual assessment of Student.

18. On February 18, 2010, Student's attorney sent a second letter to the District. The letter was in Student's name and contained his signature. The letter informed the District that Student was 18 years old and holder of his educational rights. The letter also provided: "Please direct any further questions or concerns about my request for an initial special education assessment and IEP team meeting to my attorney."

19. Griselda Flores is a School Psychologist employed by the District. Ms. Flores served both as the principal assessor and the Case Manager in the District's evaluation of Student. On March 2, 2010, Ms. Flores prepared an Individual Assessment Plan which the District sent to Student's attorney. The District prepared the assessment plan in both English and Spanish. The assessment plan proposed to evaluate Student in the following areas: (1) academic/pre-academic achievement; (2) intellectual development; (3) language/speech/communication; (4) psycho-motor development; (5) health/vision/hearing; (6) self-help/career/vocational abilities; and (7) social/emotional behaviors status.

20. On March 4, 2010, Student provided written consent for the assessment plan. On March 5, 2010, Student's attorney sent the signed plan to the District.

21. Starting in late March and continuing through April 2010, the District conducted the initial evaluation of Student. The assessment consisted of a Health History and Assessment Report prepared by a District nurse, an Audiological Evaluation conducted by a District audiologist, a Speech-Language Report prepared by Cristian Paredes, and a Psychoeducational Assessment performed by Griselda Flores.

22. On April 1, 2010, during the early stages of the evaluation, Ms. Flores sent an email to the attorney representing Student. In the email, Ms. Flores introduced herself, and asked, in part: "I understand that (Student) is an adult and holder of his educational rights, so please let me know if you would like for (Foster Mother) to be invited or involved in the IEP process."

23. On April 7, 2010, Student's attorney responded to the email message from Ms. Flores. The response email stated, in part: "I hope (Student) was assessed by a speech pathologist for speech and language, as we feel this is one of the areas of significant concerns." The response email also provided: "As far as (Foster Mother), I will contact her. For now, she is a bit preoccupied so I think it's best to go forward without her, especially since (Student) is 18 years old and needs to become independent." Ms. Flores interpreted the latter comment as a directive from the attorney that Ms. Flores not include the Foster Mother as part of the District's evaluation of Student.

24. In early April 2010, a District employed registered nurse conducted a health evaluation of Student. The evaluation included a health and developmental history. For the history, Student reported to the nurse that his family lives in Honduras, that he is the oldest of five children, that there are no significant medical or learning problems in his family, and that his future educational plans include taking classes to become an automobile mechanic. He also reported that he is generally healthy, physically active and particularly enjoys playing basketball with friends.

25. On April 22, 2010, a District employed audiologist examined Student. As background, Student reported that in his right ear he experiences tinnitus which was probably caused by shooting pistols for target practice on a regular basis. The audiological evaluation determined that Student had normal hearing in both ears, except for a high frequency notch of hearing loss in his right ear.

26. On April 29 and May 11, 2010, the District convened an individualized education program (IEP) meeting for the purpose of reviewing the initial evaluation of Student and determining whether he was eligible for special education assistance. The persons who attended these meetings included Student, his Foster Mother, his attorney, his social worker and the District assessors. At the conclusion of the May 11, 2010 meeting, the IEP team determined that Student did not qualify for special education as a pupil with a specific learning disability, a language or speech disorder, or a hearing impairment. The IEP team also ruled out eligibility under the disability categories of mental retardation, emotional disturbance and other health impairment.

27. On May 7, 2010, Student's attorney sent the District a letter which expressed disagreement with the assessments of Student performed by Griselda Flores and Cristian Paredes, and which requested independent educational evaluations in the areas of speech- language and psychoeducation. On May 14, 2010, the District sent a response letter which declined the request for independent educational evaluations.

28. On May 24, 2010, the attorney representing Student sent a letter to the District. The letter again expressed disagreement with the assessments performed by Ms. Flores and Mr. Paredes, and the audiological evaluation of Student. The letter stated, in part: "Although it is not required that we provide an explanation for our disagreements in order to obtain IEEs, our primary disagreement, as I stated at the May 11, 2010 IEP team meeting, is with the assessors' recommendations and conclusions that (Student) is not eligible for special education and related services."

29. On May 26, 2010, the District filed with the OAH the pending Request for Due Process Hearing which seeks an order that the challenged assessments were appropriate.

THE DISTRICT PSYCHOEDUCATIONAL ASSESSMENT

30. Griselda Flores conducted the challenged psychoeducational assessment of Student. Ms. Flores is the daughter of an immigrant family from Mexico. Raised in Compton, California, she visited Mexico with her parents on a regular basis. She is fluent in the Spanish language.

31. Ms. Flores obtained a master's of arts degree in counseling and educational psychology from Loyola Marymount University. She holds a Pupil Personnel Services Credential in both counseling and school psychology. From 2003 to 2007, Ms. Flores worked as a School Psychologist at the Culver City Unified School District. From 2007 to the present, she has served as a School Psychologist for the Garden Grove Unified School District. Ms. Flores testified at the due process hearing and stated that, in her seven years as a School Psychologist, she has performed over 400 psychoeducational assessments. She estimated that about 95 percent of such evaluations involved pupils from diverse cultural backgrounds, including pupils who were in foster care.

32. Ms. Flores performed the psychoeducational evaluation of Student over the course of four days during March and April 2010. The purpose of her assessment was to determine Student's present levels of functioning, to determine his eligibility for special education assistance, and to develop appropriate educational recommendations. Ms. Flores conducted the psychoeducational assessment in Spanish, except when a test instrument called for responses in English. She testified that she administered all standardized assessments in accordance with the instructions set forth in the test manuals. In her report, Ms. Flores described the normative population for the

standardized assessments that she utilized and advised caution in the interpretation of results for those instruments in which Student did not match the norm.

33. Ms. Flores used the following evaluation tools and strategies in performing her psychoeducational assessment of Student. She reviewed Student's records. She observed Student in a classroom setting and later interviewed the teacher. She obtained additional input regarding Student from his 12th grade instructors. She interviewed Student and observed him during the course of the evaluation. To measure Student's level of intellectual functioning, she administered the Comprehensive Test of Nonverbal Intelligence, Second Edition, and the Bilingual Verbal Ability Test. To measure Student's level of adaptive behavior, she administered the Vineland Adaptive Behavior Scales, Teacher Rating Form, Second Edition. To measure Student's visual-motor integration, she administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition. To measure Student's level of auditory processing, she administered the Test of Auditory Processing Skills, Third Edition: Spanish Bilingual Edition. To evaluate Student's social and emotional functioning, she administered the Behavior Assessment System for Children, Second Edition. To measure Student's level of academic achievement, she administered the Bateria III Woodcock Munoz Pruebas de Aprovechamiento. At the conclusion of her assessment, Ms. Flores prepared a document entitled "Initial Psychoeducational/Multidisciplinary Assessment" (Psychoeducational Report).

34. In performing the psychoeducational assessment of Student, Ms. Flores did not interview his Foster Mother. Ms. Flores testified that she did not include the Foster Mother in the assessment because Student's attorney did not give consent for such contact. Ms. Flores also did not speak with Student's biological parents in Honduras, obtain his school records from Honduras, obtain records from the group home where Student resided in Arizona, or interview his social worker.

35. The review of records performed by Ms. Flores included the assessments that were also part of the District's initial evaluation of Student: the Health History and Assessment Report prepared by the District nurse, the Audiological Evaluation prepared by the District audiologist, and the Speech-Language Report prepared by Cristian Paredes (discussed more fully in paragraphs 72 to 97 below). Ms. Flores also reviewed and reported Student's transcript and grades, his attendance record, and his results on the California English Language Development Test, the Language Dominance Assessment, the Standardized Testing and Reporting Program and the California High School Exit Examination.

36. On March 25, 2010, Ms. Flores observed Student in the ELD Basics course taught by Ms. Martinez. The class consisted of 26 pupils, an instructor and two aides. The lesson involved watching short videos about the rainforest and mountains, participating in a discussion and copying notes from a document projector. Ms. Flores observed that Student sat quietly at his desk and appeared attentive to the lesson. She observed that he took notes and answered several questions correctly when called upon. In answer to a question about what plants can be found in the mountains, Student answered "pines." In answer to what he would take to the mountains, he answered "shorts."

37. After the classroom observation, Ms. Flores had a discussion with Sara Martinez who reported that, compared to peers with a similar educational, cultural and linguistic background, Student's performance in her class was average. Ms. Martinez described Student as a hard worker who was a self-advocate. Ms. Martinez informed Ms. Flores that, due to huge gaps in his educational background, Student did not have much knowledge to transfer from Spanish to English. Ms. Martinez reported that Student required support in Spanish from the classroom aide. Ms. Martinez also reported that,

despite his limitations, Student performed better than some classmates. She stated that he had friends in the class, but was timid and mostly kept to himself.

38. In addition to the direct conversation with Ms. Martinez, Ms. Flores also requested Student's teachers to provide information on a form. Sara Martinez reported that Student was respectful, organized, completed his class work, sometimes participated in class, evinced good work and study habits, and demonstrated an average attention span. Student's ELD Basics Vocabulary instructor reported much the same, and informed that Student needed reassurance in class. Student's Art instructor reported that he was a great kid, polite, organized, tried hard, completed assignments, had an average attention span, and scored 50 to 70 percent on written quizzes and worksheets. Student's Physical Education teacher reported that he was cooperative, respectful, accepted by peers and had an average attention span.

39. For the psychoeducational assessment, Ms. Flores interviewed Student who provided background information. Ms. Flores determined that, for the most part, Student was a reliable reporter regarding the events of his life. She noted that he fully cooperated with the assessment process and appeared to provide sincere responses to her questions. Student informed Ms. Flores about his limited years of schooling in Honduras. He reported that he lived in a rancho where all the children received instruction in a single classroom from one teacher. He reported that he did not learn much because the teacher only taught a little and did not provide much information. He informed that, at the age of 11, he left school to help his father cultivate corn, rice and beans. He reported that, at the group home in Arizona, an instructor came to provide lessons but that he did not pay attention due to fear and uncertainty about his future. During the interview, Ms. Flores inquired about his vocational interests, and Student reported that he has a great interest in cars and wants to become a custom auto mechanic who rebuilds and remodels automobiles.

The CTONI-2

40. Ms. Flores measured Student's intellectual functioning with nonverbal and verbal assessment instruments. As the nonverbal instrument, Ms. Flores administered the Comprehensive Test of Nonverbal Intelligence, Second Edition (CTONI-2). The CTONI-2 is a norm-referenced test that measures nonverbal reasoning skills. The CTONI-2 is useful in measuring the cognitive abilities of children with English language limitations, like Student. The CTONI-2 isolates and assesses visual learning skills in the areas of analogical reasoning, categorical classification and sequential reasoning. The CTONI-2 contains six subtests: (1) Pictorial Analogies; (2) Geometric Analogies; (3) Pictorial Categories; (4) Geometric Categories; (5) Pictorial Sequences; and (6) Geometric Sequences. The three subtests relating to pictorial matters form a Pictorial Scale Composite. The three subtests relating to geometric matters form a Geometric Scale Composite.

41. Pictures of familiar objects are used in the Pictorial Scale subtests. The Pictorial Analogies subtest measures the ability to recognize the relationship of two objects to each other and to find the same relationship between two different objects. The Pictorial Categories subtest measures the ability to select from a set of different pictures the drawing that is the most similar to two other related pictures. The Pictorial Sequences subtest measures the ability to select from a set of pictures the drawing that completes a sequence of actions shown in three pictures. On each of the pictorial subtests, Student received a scaled score of five which placed him in the fifth percentile for his age. Overall, on the Pictorial Scale Composite, Student received an index score of 67 which placed him in the very poor range and ranked at the first percentile when compared with others of the same age.

42. Geometric designs are used in the Geometric Scale subtests of the CTONI-2. The Geometric Analogies subtest measures the ability to recognize the relationship of

two designs to each other and to find the same relationship between two different geometric designs. On this subtest, Student received a scaled score of one which placed him below the first percentile for his age. The Geometric Categories subtest measures the ability to select from a set of different designs the one that is the most similar to two other related geometric designs. On this subtest, Student received a scaled score of eight which placed him in the 25th percentile for his age. The Geometric Sequences subtest measures the ability to select from a set of geometric designs the one that completes a sequence of actions shown in three designs. On this subtest, Student received a scaled score of 12 which placed him in the 75th percentile for his age. Overall, on the Geometric Scale Composite, Student received an index score of 81 which placed him in the below average range and ranked at the 10th percentile when compared to others of the same age.

43. A Full Scale Composite is formed by combining the scaled scores of the six CTONI-2 subtests. Student received a Full Scale Composite score of 71 which placed him in the poor range and ranked at the third percentile when compared to others of the same age.

44. Student's results on the CTONI-2 revealed test "scatter" which is a term used to describe high and low scores on an assessment instrument. The scatter is a contested issue in this case. Student contends that the scatter in the CTONI-2 results invalidated the assessment and required further testing. Regarding the Geometric Scale Composite, Ms. Flores noted and reported clinically significant subtest scatter between the scaled score on the Geometric Analogies subtest (1) and the scaled scores on the Geometric Categories (8) and Geometric Sequences (12) subtests. Ms. Flores also noted and reported the statistically significant scatter between Student's index scores on the Pictorial Scales Composite (67) and the Geometric Scale Composite (81). Regarding the scatter between the index scores, Ms. Flores reported as follows: "The authors of the test

state that at this time they are uncertain what clinical connotations are implied by the presence of a significant difference between the two indexes. It is noted that inadequate schooling can also affect test performance.” Ms. Flores testified that the test scatter showed that Student processed differently the various cognitive skills measured by the CTONI-2. She also testified that the existence of test scatter did not invalidate the results obtained from the CTONI-2.

The BVAT

45. To measure Student’s intellectual functioning, Ms. Flores also administered the Bilingual Verbal Ability Test (BVAT). The BVAT is a standardized test instrument that measures the verbal cognitive ability of bilingual individuals. The BVAT contains three subtests: Picture Vocabulary, Oral Vocabulary and Verbal Analogies. The three subtests form a cluster or broad based measure of receptive and expressive language abilities in the individual’s combined languages. Ms. Flores first administered the BVAT subtests in English, and, if Student failed an item, she readministered the test in Spanish.

46. The Picture Vocabulary subtest measures the ability to name familiar and unfamiliar objects. On this subtest, Student received a standard score of 43, placing him below the first percentile and in the very low range for his age. The Oral Vocabulary subtest measures knowledge of word meanings through tests of synonyms and antonyms. On this subtest, Student received a standard score of 48, placing him below the first percentile and in the very low range for his age. The Verbal Analogies subtest measures the ability to comprehend and verbally complete a logical word relationship. On this subtest, Student received a standard score of 66, placing him in the first percentile and the very low range for his age.

47. In administering the BVAT, Ms. Flores obtained a measure of Student’s English Language Proficiency which was an overall score of his cognitive-academic ability in English. On this measure, Student received a standard score of 51 and a

percentile rank of less than one percent, placing him in the very low range for his age. Student's English Language Proficiency was comparable to that of the average English speaking individual at the age of five years and seven months. Ms. Flores also obtained a measure of Student's Bilingual Verbal Ability which was an estimate of Student's cognitive ability in English and Spanish combined. On this overall measure, Student received a standard score of 64 and a percentile rank of one, placing him in the very low range for his age. Student's bilingual cognitive ability was comparable to that of an average individual at age seven years and six months.

The Vineland II TRF

48. Ms. Flores measured Student's adaptive behavior through the Vineland Adaptive Behavior Scales, Teacher Rating Form, Second Edition (Vineland II TRF). The Vineland II TRF is designed to assess the personal and social skills of a child in the school setting. The test explores behaviors in three broad domains: Communication, Daily Living Skills and Socialization. Each broad domain, in turn, contains three subdomains. The Communication domain measures a pupil's abilities to listen and use words and contains subdomains for Receptive, Expressive and Written communication. The Daily Living Skills domain measures a pupil's self-sufficiency and contains subdomains for Personal, Academic and School Community. The Socialization domain measures a pupil's social abilities and contains subdomains for Interpersonal Relationships, Play-Leisure Time and Coping Skills.

49. Ms. Flores requested Sara Martinez, Student's ELD Basics instructor, to complete the Vineland II TRF. Ms. Flores testified that she made this choice because Ms. Martinez was the person at Garden Grove High most familiar with Student. On the Communication domain, Student received a standard score of 79 which placed him in the third percentile and the moderately low range for his age. On the Daily Living Skills domain, Student received a standard score of 86 which placed him in the 18th percentile

and the adequate range for his age. On the Socialization domain, Student received a standard score of 87 which placed him in the 19th percentile and the adequate range for his age. Overall, combining the domain scores, Student received an Adaptive Behavior Composite standard score of 79 which placed him in the eighth percentile and the moderately low range for his age. Ms. Flores noted and reported that, on the Vineland II TRF, Student showed weaknesses on the broad Communication domain and the Academic subdomain for Daily Living Skills. He showed relative strength in the Coping Skills subdomain for Socialization.

The Beery-Buktenica Tests

50. On April 1, 2010, Ms. Flores administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition (Beery VMI). The Beery VMI is a normed instrument that tests visual construction skills. The Beery VMI is a nonverbal measure which requires the examinee to copy geometric figures that increase in complexity. On the Beery VMI, Student received a standard score of 74 which placed him in the fourth percentile and the low range for his age. Regarding this result, Ms. Flores noted and reported that "(A)lthough (Student) scored within the low range for his age, qualitative analysis does not suggest evidence of extreme distortion of forms."

51. Ms. Flores also administered the Beery VMI Developmental Test of Perception. This visual perception test is also a nonverbal measure that requires the examinee to match the geometric figures that appear in the Beery VMI. On the Beery Visual Perception test, Student received a standard score of 70 which placed him in the second percentile and the low range for his age.

The TAPS-3:SBE

52. Ms. Flores tested Student's auditory processing through administration of the Test of Auditory Processing Skills, Third Edition: Spanish Bilingual Edition (TAPS-

3:SBE). The TAPS-3:SBE is designed to assess a child's ability to comprehend auditory information.

53. The TAPS-3:SBE has three indexes: the Phonologic Index, the Auditory Memory Index and the Auditory Cohesion Index. Each index contains subtests. The Phonologic Index is comprised of subtests relating to Word Discrimination, Phonological Segmentation and Phonological Blending. These subtests provide quick assessments of basic phonological abilities that allow a person to discriminate between sounds within words, segment words into morphemes, and blend phonemes into words. On the Word Discrimination subtest, Student received a scaled score of 10. On the Phonological Segmentation subtest, Student received a scaled score of 12. On the Phonological Blending subtest, Student received a scaled score of one. Overall, on the Phonologic Index, Student received a standard score of 88, indicating that he scored as well as or better than 21 percent of the same-aged pupils in the normative population.

54. The Auditory Memory Index on the TAPS-3:SBE is comprised of subtests denominated as Number Memory Forward, Number Memory Reversed, Word Memory and Sentence Memory. These subtests are measures of basic memory processes, including sequencing. On the Number Memory Forward subtest, Student received a scaled score of three which placed him in the first percentile for his age. On the Number Memory Reversed subtest, Student received a scaled score of four which placed him in the second percentile for his age. On the Word Memory and Sentence Memory subtests, Student received scaled scores of seven. Overall, on the Auditory Memory Index, Student received a standard score of 76, indicating that he scored as well or better than five percent of the same-aged pupils in the normative population.

55. The Auditory Cohesion Index of the TAPS-3:SBE is comprised of subtests relating to Auditory Comprehension and Auditory Reasoning. These subtests measure two skills necessary for auditory cohesion which is a higher-order process. In the

Auditory Comprehension subtest, the examiner reads sentences or short passages and asks the pupil questions about the reading. On this subtest, Student received a scaled score of eight. In the Auditory Reasoning subtest, the examiner asks questions that require the pupil to use inferences, deductions and abstractions to understand the figurative meaning of a passage. On this subtest, Student received a scaled score of three which placed him in the first percentile for his age. Overall, on the Auditory Cohesion Index, Student received a standard score of 78, indicating that he scored as well or better than seven percent of the same-aged pupils in the normative population.

56. On the TAPS-3:SBE, Student received an Overall standard score of 81, indicating that he scored as well or better than 10 percent of the same-aged pupils in the normative population. Regarding the Phonologic Index, Student's scaled scores on the Phonological Blending (1) subtest, as compared with his scaled scores on the Word Discrimination (10) and Phonological Segmentation (12) subtests, represented another example of subtest scatter. On this point, Ms. Flores testified that, in her opinion, Student's low scores on the Phonological Blending subtest was more the result of his limited vocabulary than his ability to blend phonemes into words. The results from the District's speech-language assessment of Student supported this opinion. (Factual Findings, ¶¶ 86, 88, 89, 92.) Ms. Flores also testified that, in her opinion, Student's scores on the Auditory Memory subtests did not evince a weakness in auditory attention.

The BASC-2

57. Ms. Flores utilized the Behavior Assessment System for Children, Second Edition (BASC-2) to measure Student's functioning on the social and emotional level. The BASC-2 is an instrument designed to facilitate the differential diagnosis and classification of emotional and behavioral disorders in children, and to aid in the design of treatment plans. The BASC-2 is based upon a rating system that results in T scores obtained from norms. For the BASC-2, Ms. Flores requested Sara Martinez to complete

the Teacher Rating Scales-Adolescent Ages 12-21. In the majority of the areas scored, Student received results in the "Normal" range, including the areas of Hyperactivity, Attention Problems and Learning Problems. Student did score in the "At-Risk" range in the areas of Leadership and Functional Communication.

58. In addition, Ms. Flores requested Student to complete the BASC-2 Autoreporte: Adolescente Edades 12 a 21 (Self Report Scales: Adolescent Ages 12 to 21). Student rated himself in the "Average" range for the areas scored, including the areas of Attention Problems, Hyperactivity and the Emotional Symptoms Index. Ms. Flores noted and reported that, to a certain extent, the results of the self-report must be viewed with caution since Student endorsed a variety of unrealistic positive statements, indicating that he may have been "faking good" in his responses.

The Bateria III

59. Ms. Flores measured Student's level of academic achievement through the Bateria III Woodcock-Munoz Pruebas de Aprovechamiento (Bateria III). The Bateria III is the parallel Spanish version of the Woodcock-Johnson III. Ms. Flores utilized the Bateria III to assess Student's achievement in the broad areas of reading, mathematics and writing. Ms. Flores administered the Bateria III in Spanish.

60. Under Amplia Lectura (Broad Reading), Ms. Flores administered three subtests: (1) Identificacion de Letras y Palabras (Letter-Word Identification), (2) Fluidez en la Lectura (Reading Fluency), and (3) Comprension de Textos (Passage Comprehension). The test for Identificacion de Letras y Palabras measures the ability to decode in reading, including the ability to identify letter names and words. On this subtest, Student received a standard score of 79 which placed him in the low range and ranked at the eighth percentile for his age. The test for Fluidez en la Lectura requires the ability to read and comprehend simple sentences quickly, and measures reading speed and rate. On this subtest, Student received a standard score of 74 which placed him in

the low range and ranked at the fourth percentile for his age. The subtest for Comprension de Textos measures reading comprehension and lexical knowledge. On this subtest, Student received a standard score of 67 which placed him in the very low range and ranked at the first percentile for his age. Overall, on the Amplia Lectura (Broad Reading) cluster, Student received a composite score of 73, placing him in the low range and at the fourth percentile when compared to others at his age level.

61. Under Amplia Matematicas (Broad Math), Ms. Flores administered three subtests: (1) Calculo (Calculation), (2) Fluidez en Matematicas (Math Fluency), and (3) Problemas Aplicados (Applied Problems). The subtest for Calculo requires the pupil to perform a variety of calculations, and measures the ability to perform mathematical computations. On this subtest, Student received a standard score of 61 which placed him within the very low range and ranked at the 0.4 percentile for his age. The Fluidez en Matematicas subtest requires the pupil to rapidly and accurately solve simple problems, and measures math achievement and number facility. On this subtest, Student received a standard score of 70 which placed him within the low range and ranked at the second percentile for his age. The Problemas Aplicados subtest requires the ability to analyze and solve math problems, and measures quantitative reasoning, math achievement and math knowledge. On this subtest, Student received a standard score of 68 which placed him within the very low range and ranked at the second percentile for his age. Overall, on the Amplia Matematicas (Broad Math) cluster, Student received a composite score of 61, placing him in the very low range and ranked at the 0.4 percentile when compared to others his age.

62. Under Amplia Lenguaje Escrito (Broad Written Language), Ms. Flores also administered three subtests: (1) Ortografia (Spelling), (2) Fluidez en la Escritura (Writing Fluency), and (3) Muestra de Redaccion (Writing Samples). The Ortografia subtest requires the production of single letters and words, and measures the knowledge of

prewriting skills and spelling. On this subtest, Student received a standard score of 73 which placed him within the low range and ranked at the fourth percentile for his age. The *Fluidez en la Escritura* subtest requires the production of legible, simple sentences with acceptable syntax, and measures the ability to write rapidly with ease. On this subtest, Student received a standard score of 65 which placed him within the very low range and ranked at the first percentile for his age. The *Muestra de Redaccion* subtest requires the production of meaningful written sentences, and measures the ability to convey ideas in writing. On this subtest, Student received a standard score of 61 which placed him within the very low range and ranked at the 0.4 percentile for his age. Overall, on the *Amplia Lenguaje Escrito* (Broad Written Language) cluster, Student received a composite score of 63, placing him in the very low range and ranked at the first percentile when compared to others his age.

63. Regarding Student's results on the *Bateria III*, Ms. Flores noted and reported that his academic skills are within the low range of others his age. She also noted and reported that both Student's fluency with academic tasks and his ability to apply academic skills are within the very low range of others at his age. Ms. Flores testified that, in her opinion, Student's low academic achievement scores were consistent with his limited exposure to academic subjects. As regards Student's level of academic achievement, Ms. Flores also noted and reported his performance at Garden Grove High and on statewide assessments. Her report set forth information regarding his courses, grades and class rankings, and included his results on the CELDT, CAHSEE and STAR Program tests.

The Psychoeducational Report

64. At the conclusion of her evaluation, Ms. Flores prepared a Psychoeducational Report. The report contained a description of the assessment measures and materials that she utilized in her evaluation. In the report, Ms. Flores

included a section describing her observations of Student. In the report, Ms. Flores made recommendations that Student was not eligible for special education assistance under the categories of specific learning disability and hearing impairment. Ms. Flores ruled out eligibility under the disability categories of mental retardation, emotional disturbance and other health impairment. The report also contained information concerning Student's limited educational background.

65. Regarding her determination that Student did not qualify for special education as a pupil with a specific learning disability, Ms. Flores testified that she concluded and reported that Student did not show a severe discrepancy between intellectual ability and academic achievement. In California, a severe discrepancy exists when the difference between a child's intellectual ability and academic achievement on standardized test instruments exceeds 22.5 points, plus or minus four points (one standard deviation). (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4)(A).) Ms. Flores determined that Student's intellectual ability scores as 71 on the CTONI-2 and 64 on the BVAT. She determined from the Bateria III that his academic achievement scores were 73 on Broad Reading, 61 on Broad Mathematics and 63 on Broad Written Language. The Psychoeducational Report of Ms. Flores contains these scores which do not reflect a severe discrepancy. In this regard, Ms. Flores concluded and reported: "(Student's) limited school experience cannot be ruled out as a primary factor in his performance of standardized tests of intellectual achievement, psychological processing, and academic achievement." Ms. Flores testified that, in her opinion, a limited educational background can affect a person's cognitive abilities. She also testified that Student's classroom performance did not contradict the test results which did not show a severe discrepancy between his cognitive abilities and academic achievement.

66. Griselda Flores was a persuasive witness. She has considerable experience performing bilingual psychoeducational assessments. She is fluent in Spanish and has

knowledge of the cultural diversity between English and Spanish speaking peoples. In her Psychoeducational Report, she presented a thorough and fair portrait of Student. In her testimony, she displayed professional knowledge and competence.

THE OPINION OF DR. JOSE FUENTES

67. Jose L. Fuentes, Ph.D. (Dr. Fuentes), appeared as an expert witness for Student. Dr. Fuentes is a Clinical Neuropsychologist who is bilingual in English and Spanish. Dr. Fuentes is licensed in California as a Marriage-Family Counselor and Clinical Psychologist. In 2002, Dr. Fuentes received his doctorate in clinical psychology from Loma Linda University. In 2002, Dr. Fuentes completed an APA-accredited internship in Pediatric Neuropsychology through the University of Southern California. In 2004, Dr. Fuentes completed a two year APA-accredited post-doctoral fellowship in Clinical Neuropsychology through the University of California at Los Angeles. Dr. Fuentes operates a private practice in Loma Linda, California. He has experience conducting psychoeducational assessments and has worked with school districts in California on matters relating to evaluations. He has appeared as an expert witness in prior special education administrative due process proceedings.

68. As regards Student, Dr. Fuentes performed a review regarding the challenged District assessments. For the review, Dr. Fuentes considered the following written materials: the Psychoeducational Report of Griselda Flores, the Speech-Language Report of Cristian Paredes, the protocols related to these two assessments, and the written evaluations prepared by the District nurse and audiologist. Dr. Fuentes prepared a brief report of his review.

69. Concerning the Psychoeducational Report, Dr. Fuentes focused upon the test scores from the CTONI-2, and, in particular, the scatter between the scaled scores on the subtests within the Geometric Scale, and between the composite scores for the Pictorial Scale and Geometric Scale. On this point, the report of Dr. Fuentes provided: “. .

. the results of testing also fail to reconcile significant scatter in (Student's) performance, which appear to have important implications to the results obtained in testing, and by default, the conclusions that were supported by these results." In his testimony, Dr. Fuentes augmented this finding. He stated that a statistically different score rarely occurs in the testing population; that professional convention and general understanding is that the more there is test scatter the less reliable is the result; and that, based upon the spread in scores, the CTONI-2 was not an accurate picture of Student's intellectual functioning. Dr. Fuentes further testified that, because the CTONI-2 results were not accurate, the District could not make a valid determination of whether Student exhibited a severe discrepancy between his intellectual ability and academic achievement. In this regard, Dr. Fuentes stated that the BVAT is not a test that measures intellectual ability. Dr. Fuentes acknowledged that Student's limited amount of schooling could be a factor explaining his test results, but he testified that there were other possibilities, including delays in attention and executive functioning, that Ms. Flores should have explored. In sum, Dr. Fuentes opined that Ms. Flores should have conducted additional testing.

70. In his testimony, Dr. Fuentes also focused upon the test scatter that appeared in the TAPS-3:SBE assessment of Student. Again, he opined that the scatter undermined the accuracy of the results of this evaluation. He stated that Student's low scores on the Memory Index and on the Phonological Blending subtest demanded additional testing in the areas of attention, executive functioning and memory.

71. Dr. Fuentes has impressive credentials and he was an excellent witness. However, for several reasons, his report and testimony were unpersuasive in undermining the appropriateness of the District's psychological assessment of Student. First, contrary to the District's obligation of conducting an evaluation which draws upon a variety of sources, the opinions of Dr. Fuentes derive from a very narrow focus on the

“data” of Student’s test results. Dr. Fuentes did not assess Student. He did not meet Student until he testified at the due process hearing. He did not observe Student in the classroom, home or community. He did not interview Student’s teachers or discuss the challenged evaluations with the District assessors. Second, Dr. Fuentes did not address the impact that Student’s limited educational background had on his intellectual abilities, psychological processing and academic achievement. To this extent, Dr. Fuentes did not offer insight into the fact that, except for matters relating to social skills, Student scored consistently low in all areas tested. Finally, in a related vein, Dr. Fuentes also failed to address the dichotomy between Student’s low test scores and his performance at Garden Grove High. In calling for additional testing, Dr. Fuentes did not attempt to reconcile the fact that, while Student tested in the range of mental retardation in several standardized tests administered by Ms. Flores, nevertheless, he was progressing in both his classwork and on statewide assessments.

THE DISTRICT SPEECH-LANGUAGE ASSESSMENT

72. Cristian Paredes conducted the challenged speech-language assessment of Student. Mr. Paredes was born in Chile and spent part of his youth in Venezuela. When he moved to the United States, at age 22, he spoke exclusively Spanish. Impressively, he took English language classes, and he is now fluent in English.

73. Mr. Paredes is a California licensed Speech-Language Pathologist. In June 2004, he received a bachelor of arts in communication disorders from California State University at Long Beach (CSU Long Beach). From September 2004 to June 2007, he worked as a Speech-Language Specialist at Norwalk-La Mirada Unified School District. For the 2007-2008 school year, he served as a Speech-Language Pathologist at the ABC Unified School District, where he helped to develop an assessment battery for bilingual pupils. In September 2007, he received a master’s degree in speech-language pathology from CSU Long Beach. From September 2008 to the present, he has worked as a

Speech-Language Pathologist at the Garden Grove Unified School District. Mr. Paredes testified at the due process hearing and stated that he has extensive experience in selecting and conducting evaluations of bilingual pupils. In his career, he has performed approximately 400 speech-language assessments and roughly half of such evaluations were bilingual assessments. Mr. Paredes also holds a part-time faculty position at CSU Long Beach where he supervises graduate students who are obtaining a master's degree in communication disorders.

74. Mr. Paredes performed the speech-language assessment of Student on April 8 and 19, 2010. He conducted the evaluation in a quiet room at Garden Grove High. He performed the assessment in Spanish after determining that Student spoke in fragmented English sentences and was more comfortable communicating in his native tongue. Mr. Paredes was aware of Student's background, including his limited time in school, from the Psychoeducational Report prepared by Griselda Flores. During the evaluation, Mr. Paredes developed a good rapport with Student. At the conclusion of the process, Student asked Mr. Paredes for recommendations on how to learn English at a quicker pace.

75. Mr. Paredes testified that, in his assessment, he looked at Student's skills in the five areas of language development: morphology, phonology, syntax, semantics and pragmatics. To achieve this purpose, Mr. Paredes used the following evaluation tools and strategies. He interviewed Student and observed him during the assessment process. He administered on a formal basis the Clinical Evaluation of Language Fundamentals, Fourth Edition, Spanish Edition (CELF-4:Spanish). He also administered on an informal basis the following instruments: the Expressive One-Word Picture Vocabulary Test, Spanish Bilingual Edition, the Receptive One-Word Picture Vocabulary Test, Spanish Bilingual Edition, and the Structured Photographic Expressive Language Test II, Spanish Edition. Mr. Paredes completed an Interpersonal Communication

Checklist to measure Student's interpersonal communication skills. He also completed a Clinical Discourse Analysis to evaluate Student's development of discourse. He prepared a Speech and Language Sample Analysis based upon the tests that he had administered. Mr. Paredes also tested Student in the areas of articulation, abnormal voice and fluency. He testified that he has utilized this assessment battery in the past; that the battery has proved successful and was effective with Student; and that each of the instruments utilized were valid. At the conclusion of the assessment, Mr. Paredes prepared a Speech-Language Report.

76. In performing the speech-language assessment of Student, Mr. Paredes did not interview his Foster Mother or social worker. He also did not interview Student's 12th grade teachers, or observe him in his classrooms. Mr. Paredes testified that he considered Student to be a reliable self-reporter.

77. Interviewing Student, Mr. Paredes learned that Student did not have any exposure to English in Honduras. Mr. Paredes also learned that, while at the group home in Arizona, Student spent a good amount of time playing video games and did not receive formal educational instruction. During the assessment process, Mr. Paredes observed that Student was polite and alert; that he smiled easily; and that he spoke in grammatically correct sentences in Spanish. He observed that Student was inquisitive and quick to ask for clarification if he did not understand something. Mr. Paredes also noted that Student used an appropriate historical sequence in discussing the events of his life.

The CELF-4:Spanish

78. The CELF-4:Spanish is an age-normed assessment instrument designed to test whether a Spanish-speaking pupil has a speech-language disorder. The CELF-4:Spanish examines a pupil's skills in the areas of morphology and syntax in the Spanish language. Mr. Paredes administered the standardized "Core Language" section of the

CELF-4:Spanish. This standardized core consisted of the following subtests: (1) Recordando Oraciones (Remembering Sentences); (2) Formulacion de Oraciones (Formulation of Sentences); (3) Clases de Palabras-Receptivo (Receptive Words); (4) Clases de Palabras-Expresivo (Expressive Words); (5) Definiciones de Palabras (Definition of Words); and (6) Entendiendo Parrafos (Understanding Paragraphs). In addition, Mr. Paredes also administered two criterion-referenced subtests of the CELF-4:Spanish: (1) the Conocimiento Fonologico (Phonological Knowledge) and (2) the Clasificacion Pragmatica (Pragmatic Classification).

79. On the standardized portion of the CELF-4:Spanish, Mr. Paredes did not administer the following subtests: Conceptos y Siguiendo Direcciones (Concepts and Following Directions); Vocabulario Expresivo (Expressive Vocabulary); Asociacion de Palabras (Association of Words); Repeticion de Numeros (Repetition of Numbers); and Secuencias Familiares (Familiar Sequences).

80. Regarding the Core Language subtests of the CELF-4:Spanish, Recordando Oraciones measured Student's ability to listen and repeat spoken sentences in Spanish. For this subtest, Mr. Paredes read 25 sentences that increased in complexity, and Student was asked to repeat the sentences without changing meaning, inflection, comparison and structure. On Recordando Oraciones, Student received a scaled score of six which placed him in the low average range for his age. Mr. Paredes noted and reported that, in providing responses, Student showed a knowledge of rules relating to verb phrases, passive declaratives, passive with coordination, subordinate clauses, relative clauses, interrogatives and coordination. Student had more difficulty remembering negations in sentences, prepositional phrases and conjunctions.

81. The Formulacion de Oraciones subtest measured Student's ability to formulate complete and grammatically correct sentences. Mr. Paredes gave 26 words or short phrases in Spanish, and asked Student to state a sentence using the word or

phrase. On this subtest, Student received a scaled score of eight which placed him in the average range for his age. Mr. Paredes noted and reported that Student formulated most sentences with the correct grammatical order and obligatory content. He also noted and reported that, in creating the sentences, Student used the following semantic markers appropriately: nouns, verbs, adjectives, adverbs and conjunctive adverbs. Student had more difficulty with coordinated and subordinated conjunctions and formulating phrases.

82. The Clases de Palabras-Receptivo and Clases de Palabras-Expresivo subtests measured Student's ability to understand and explain relationships between words. The Clases de Palabras-Receptivo contained 26 lists with four words in each list. Two words in the list were related, such as "lapiz" (pencil) and "papel" (paper). Mr. Paredes read the lists and asked Student to identify the related words. For the Clases de Palabras-Expresivo, Mr. Paredes asked Student to explain the connection between the related words in each list. On the Clases de Palabras-Receptivo, Student received a scaled score of four which placed him in the below average range for his age. On the Clases de Palabras-Expresivo, Student received a scaled score of six which placed him in the low average range for his age. Mr. Paredes noted and reported that on the Clases de Palabras subtests, Student demonstrated that he understood categories relating to school concepts, clothing, transportation, community, common material and home items. Student showed less understanding of categories relating to sports, recreation, quantity, time and verbs.

83. The Definciones de Palabras subtest measured Student's ability to analyze words by their meaning. Mr. Paredes read 26 sentences with each sentence containing a test word. For each sentence, Mr. Paredes asked Student to select a response which best described the meaning of the test word. On Definciones de Palabras, Student received a scaled score of eight which placed him in the average range for his age. Mr. Paredes

noted and reported that, from this subtest, Student demonstrated an understanding of some science, language, art and community, but showed less understanding of categories related to social studies.

84. The Entendiendo Parrafos subtest measured Student's ability to sustain attention and focus while listening to spoken paragraphs. Mr. Paredes read three paragraphs which contained five or more sentences. After each reading, Mr. Paredes asked Student to answer five questions regarding the content of the paragraph. On Entendiendo Parrafos, Student received a scaled score of five which placed him in the below average range for his age. Mr. Paredes noted and reported that, while Student successfully identified the main idea in each paragraph presented and correctly identified inferences, details and sequences, he showed difficulty with predictions. The protocols for the CELF-4:Spanish indicate that the Clases de Palabras-Receptivo and Entendiendo Parrafos subtests constitute the Receptive Language portion of this test. On this portion, Mr. Paredes scored Student with a percentile rank of two.

85. Overall, on the Core Language portion of the CELF-4:Spanish, Student received a standard score of 79 which gave him a percentile rank of nine and placed him between the average and low average ranges for his age. Mr. Paredes concluded and reported that Student's morpho-linguistic skills in the Spanish language reflected a lack of exposure to academia rather than a language delay or impairment.

86. Regarding the criterion-based subtests, Mr. Paredes utilized the Conocimiento Fonologico to measure Student's knowledge of sound structure and language, and his ability to manipulate sound combinations. He determined that Student had difficulty with phonemic awareness of sounds in isolation, but he met the criterion in the subtest.

87. Mr. Paredes utilized the Clasificacion Pragmatica subtest to measure whether Student had social deficits that may impact academic interactions in a social

environment. The Clasificacion Pragmatica contains three areas of inquiry: (1) Rituals and Conversational Skills; (2) Asking for, Giving, and Responding to Information; and (3) Nonverbal Communication Skills. Each area of inquiry contains statements that the examiner must rate. Overall, Mr. Paredes scored Student in the borderline range for social interactions. However, Mr. Paredes qualified this score by noting that he did not rate certain items because he did not observe Student in his classrooms interacting with teachers and peers. Mr. Paredes testified that, in preparation for the hearing in this case, he did make such observations, and that Student met the criterion in this subtest. Based upon the Clasificacion Pragmatica subtest, Mr. Paredes noted and reported that Student evinced appropriate ritual and conversational skills; that he evinced appropriate basic communication exchange skills such as greeting, beginning conversation and sense of humor; and that Student's area of strength was non-verbal communication skills which include facial cues, body language, tone of voice and reading social situations.

Informal Assessment Measures

88. The Expressive One-Word Picture Vocabulary Test, Spanish Language Edition (EOWPVT:SBE) is designed to measure a pupil's speaking vocabulary in English and Spanish. The Receptive One-Word Picture Vocabulary Test, Spanish Language Edition (ROWPVT:SBE) is designed to measure a pupil's receptive vocabulary in English and Spanish. In both the EOWPVT:SBE and ROWPVT:SBE, the examiner asks the pupil to name objects, actions and concepts that are pictured in illustrations. These assessment instruments are standardized on Spanish-speaking students aged four through 12 years and 11 months. Because Student is older than the normed population, Mr. Paredes utilized the EOWPVT:SBE and ROWPVT:SBE to obtain a baseline of Student's receptive vocabulary and semantic skills at the single word level. Mr. Paredes testified that it is permissible practice for a speech-language pathologist to utilize the instruments in this manner.

89. With the EOWPVT:SBE, Mr. Paredes presented Student with 120 illustrated items. Student correctly answered 86 items in Spanish and two items in English. For the ROWPVT:SBE, Mr. Paredes presented Student with 114 items and Student correctly identified 103 items. From this informal evaluation, Mr. Paredes noted and reported that Student demonstrated knowledge of words relating to animals, clothing, food, tools, transportation and feelings. He also concluded and reported that the informal test results indicated that Student has the receptive vocabulary of a younger individual, but that, due to his limited educational background and exposure to academic lexicon, Student's lower than expected vocabulary was not indicative of a language disorder.

90. The Structured Photographic Expressive Language Test-II, Spanish Edition (SPELT-2:Spanish) is designed to assess a child's oral knowledge of the structure of the Spanish language. In the SPELT-2:Spanish, the examiner presents the pupil with 50 color photographs of everyday situations and objects. The photographs are paired with simple verbal questions. The elicited responses identify the pupil's strengths and weaknesses in the areas of morphology and syntax. Mr. Paredes administered the SPELT-2:Spanish in an informal manner because the assessment is not standardized for pupils who are Student's age. From Student's responses during the administration of the SPELT-2:Spanish, Mr. Paredes concluded and reported that Student's syntactical and morphological skills are used in an average fashion. He noted and reported that Student appropriately used many language markers, including present progressive verbs, the simple plural "s," third person singular, concepts of location, future tense, regular past tense and possessive pronouns.

91. Mr. Paredes completed an Interpersonal Communication Checklist which he adapted from a Multicultural-Multilingual Assessment Form created by published authors. Mr. Paredes testified that he used this measure to assess Student in the area of pragmatics which concerns his relationships with teachers and peers. In his Interpersonal

Communication Checklist, Mr. Paredes rates a pupil's skills in the areas of Conversation, Social Language, Questions, Non-Verbal and Reasoning. Student received a low rating under the items of "acknowledging the topic and maintains the conversation for an appropriate length of time" and "makes predictions." He showed strength in the broad areas of Social Language and Non-Verbal skills. Overall, Mr. Paredes concluded and reported that Student presented with appropriate interpersonal skills.

92. Mr. Paredes also completed a Clinical Discourse Analysis which was based upon Student's conduct during the speech-language assessment. This informal measure evaluated the Quantity, Quality, Relation and Manner of Student's discourse. Mr. Paredes testified that, in conducting the Clinical Discourse Analysis, Student evinced skills appropriate for a younger individual.

93. Mr. Paredes prepared a Speech and Language Sample Analysis which focused upon Student's skills in the areas of morphology and syntax. The analysis was based upon tests administered during the speech-language assessment, including the CELF-4:Spanish, the SPELT-2:Spanish, and the observations of Student during the evaluation process. For the Speech and Language Sample Analysis, Mr. Paredes noted and reported that Student demonstrated the following abilities: he talked spontaneously using complete complex sentences; he used all verb tenses appropriately; he used all syntactical markers appropriately; he used regular and irregular plurals; he named and labeled objects; he used action words; he used words denoting time, place quantity and recurrence; he used words to describe objects and people; he used words denoting possession; he used words to give reason; and he answered "wh" type and yes/no questions.

Speech Abilities

94. In his speech-language assessment, Mr. Paredes also tested Student to determine whether he had an articulation disorder, abnormal voice or fluency disorder.

Mr. Paredes performed a General Speech Behavioral Rating Scale and determined that Student's vocal quality, volume, rate and pitch appeared to be within normal limits. He performed an Oral Mechanism Exam and determined that Student's lips, tongue and palate were adequate for normal speech production. He performed a Diadokokinesis Test and determined that Student was able to produce single and multisyllabic combinations in a rapid fashion with no difficulty. He also determined that Student's voice appeared appropriate for his age and that Student did not evince any dysfluencies.

Report and Eligibility Recommendation

95. The Speech-Language Report prepared by Mr. Paredes contained a description of his speech-language assessment of Student, including his behavioral observations, test measures and test results. Regarding Student's native language skills, Mr. Paredes concluded and reported that Student's skills in the areas of morphology and syntax were in between the average and low average range. He determined that Student's sentence structure during connected speech followed the morphological rules of the Spanish language. Mr. Paredes concluded and reported that Student's semantic skills were also in between the average and low average range. He noted that Student used the content of language appropriately within context. Mr. Paredes concluded and reported that Student exhibited phonological skills in the average range. He also concluded and reported that Student exhibited pragmatic skills in the average range. In this regard, he noted that Student was very polite and was able to maintain a dialogue with peers and other adults. In interpreting the assessment measures, Mr. Paredes utilized reference sources related to the effects of bilingualism and limited educational development on language skills. Finally, Mr. Paredes concluded and reported that Student was not eligible for special education as a pupil with a speech and language disorder.

96. Cristian Paredes was a persuasive witness. He has lived in two Spanish speaking countries. He is deeply involved in the assessment of bilingual students. He has considerable experience performing speech-language assessments. His evaluation of Student was fair, balanced and thorough. He was composed and thoughtful during his testimony.

THE OPINION OF DR. JOSE FUENTES

97. Dr. Fuentes offered a relatively mild critique of the speech-language assessment of Mr. Paredes. Dr. Fuentes faulted Mr. Paredes for utilizing the EOWPVT:SBE and ROWPVT:SBE on an informal basis. He wanted Mr. Paredes to use instruments normed for Student, but he could not name any such assessments. In actuality, Dr. Fuentes does not perform speech-language assessments, and, in his practice, if he suspects that a client has a speech and language disorder, he makes a referral to a Speech-Language Pathologist. Dr. Fuentes did not offer any persuasive evidence against the appropriateness of the District speech-language assessment of Student.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a special education administrative due process proceeding, the party who is seeking relief has the burden of proof or persuasion. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) In this case, the Garden Grove Unified School District has brought the complaint and has the burden of proof.

OAH JURISDICTION

2. Under federal and state law, a parent or adult student has the right to an independent educational evaluation at public expense if the parent or student disagrees with an assessment obtained by a school district, and certain other conditions are

satisfied. (34 C.F.R. § 300.502(b)(1)(2006); Ed. Code, § 56329, subd. (b).) If a parent or adult student requests an independent educational evaluation, a school district must, without unnecessary delay, either file a due process complaint to request an order showing that the disputed assessment is appropriate, or ensure that the requested independent educational evaluation is provided at public expense. (34 C.F.R. § 300.502(b)(2)(2006).)

3. In this case, Student has disagreed with the subject psychoeducational and speech-language assessments and requested independent educational evaluations. In the pending Request for Due Process, the District seeks an order that such evaluations are appropriate. The Office of Administrative Hearings has jurisdiction to hear and decide this matter. (Ed. Code, §§ 56329, subd. (c), 56501, subd. (a).)

ASSESSMENT STANDARDS

4. In performing an initial evaluation to determine special education eligibility, a school district must follow certain procedures prescribed by federal and State law. In general, the initial evaluation must consist of procedures to determine if the child is an individual with exceptional needs, and determine the educational needs of the child. (20 U.S.C. § 1414(a)(1)(C)(i); 34 C.F.R. § 300.301(c)(2) (2006); Ed. Code, § 56302.1, subd. (a).)

5. In conducting an evaluation, a school district must follow three basic tenants. First, the district must use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the pupil, including information provided by the parent, that may assist the district in determining whether the pupil is a child with a disability. (20 U.S.C. § 1414(b)(2)(A)(i); 34 C.F.R. § 300.304(b)(1) (2006); Ed. Code, § 56320, subd. (f).)

6. Second, the district must not use any single measure or assessment as the sole criterion for determining whether the pupil is a child with a disability. (20 U.S.C. §

1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2) (2006); Ed. Code, § 56320, subd. (e); Cal. Code Regs., tit. 5, § 3030.)

7. Third, the district must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3) (2006); Ed. Code, § 56320, subd. (f).)

8. In addition, in performing an evaluation, a school district must follow procedures that ensure the fairness and accuracy of the assessment. The district must ensure that assessments and other evaluation materials used to assess a pupil are selected and administered so as not to be discriminatory on a racial or cultural basis. (20 U.S.C. § 1414(b)(3)(A)(i); 34 C.F.R. § 300.304(c)(1)(i) (2006); Ed. Code, § 56320, subd. (a).)

9. The district must ensure that assessments and other evaluation materials used to assess a pupil are provided in the child's native language and in the form most likely to yield accurate information on what the pupil knows and can do academically, developmentally and functionally, unless it is clearly not feasible to do so. (20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii)(2006); Ed. Code, § 56320, subd. (a), (b)(1).)

10. The district must ensure that assessments and other evaluation materials used to assess a pupil are used for the purposes for which the assessments or measures are valid and reliable. (20 U.S.C. § 1414(b)(3)(A)(iii); 34 C.F.R. § 300.304(c)(1)(iii)(2006); Ed. Code, § 56320, subd. (b)(2).)

11. The district must ensure that assessments and other evaluation materials used to assess a pupil are administered by trained and knowledgeable personnel. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv)(2006); Ed. Code, § 56320, subd. (b)(3).) In California, the assessment of a disability must be performed by a person who is knowledgeable of that disability. (Ed. Code, § 56320, subd. (g).)

12. In California, a credentialed school psychologist must administer individually administered tests of intellectual or emotional functioning. (Ed. Code, § 56320, subd. (b)(3).) The credentialed school psychologist must be trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324, subd. (a).)

13. The district must ensure that assessments and other evaluation materials used to assess a pupil are administered in accordance with any instructions provided by the producer of the assessments. (20 U.S.C. § 1414(b)(3)(A)(v); 34 C.F.R. § 300.304(c)(1)(v) (2006); Ed. Code, § 56320, subd. (b)(3).)

14. In conducting an evaluation, a school district must ensure that assessments and other evaluation materials include measures tailored to assess specific areas of educational need and not merely tests designed to provide a single intelligence quotient. (34 C.F.R. § 300.304(c)(2)(2006); Ed. Code, § 56320, subd. (c).)

15. In conducting an evaluation, a district must ensure that assessments are selected and administered so as best to ensure that, if an assessment is administered to a pupil with impaired sensory, manual or speaking skills, the assessment results accurately reflect the pupil's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills, unless such skills are the factors that the test purports to measure. (34 C.F.R. § 300.304(c)(3) (2006); Ed. Code, § 56320, subd. (d).)

16. In conducting an evaluation, a district must ensure that the pupil is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4)(2006); Ed. Code, § 56320, subd. (f).)

17. In conducting an evaluation, a district must utilize assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(7) (2006); Ed. Code, § 56320, subd. (f).)

18. As part of the initial evaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including evaluations and information provided by the parent, classroom observations, State assessments, and teacher/provider observations. (20 U.S.C. § 1414(c)(1)(A)(i)-(iii); 34 C.F.R. § 300.305(a)(1)(i)-(iii)(2006); Ed. Code, § 56320, subd. (f), (h).)

19. Several procedures relating to the determination of eligibility inform the assessment process. First, the team that determines whether a pupil is eligible for special education must "(D)raw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior." (20 U.S.C. § 1414(c)(2); 34 C.F.R. § 300.306(c)(1)(i)(2006); Ed. Code, § 56330.)

20. Second, the team cannot decide that a child is eligible for special education if the determinate factor for eligibility is a lack of appropriate instruction in reading or math, and limited English proficiency. (20 U.S.C. § 1414(b)(5)(A)-(C); 34 C.F.R. § 300.306(b)(1)(i)-(iii)(2006); Ed. Code, § 56026, subd. (e).)

21. To the extent that an initial evaluation must determine whether a pupil is an individual with exceptional needs, the eligibility categories also inform the assessment process. Here, Student contends that he is eligible for special education as a pupil with a specific learning disability. Under federal and state law, a "specific learning disability" means a disorder in one or more of the basic psychological processes involved in using language, spoken or written, that may manifest itself in the imperfect

ability to listen, think, speak, read, write, spell, or perform mathematical calculations. (20 U.S.C. § 1401(30)(A); 34 C.F.R. § 300.8(c)(10)(i)(2006); 56337, subd. (a).) A specific learning disability is revealed through a severe discrepancy between the pupil's intellectual ability and academic achievement. (Cal. Code Regs., tit. 5, § 3030, subd. (j)(4)(A).) A specific learning disability cannot be the result of a learning problem that primarily results from environmental, cultural or economic disadvantage. (20 U.S.C. § 1401(30)(C); 34 C.F.R. §§ 300.8(c)(10)(ii)(2006), 300.309(a)(3)(2006); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, §§ 3023, subd. (b), 3030, subd. (j)(5).)

22. Student also contends that he is eligible for special education as a pupil with a speech-language impairment. In California, a speech or language disorder includes "(I)nappropriate or inadequate acquisition, comprehension or expression of spoken language such that the pupil's language performance level is found to be significantly below the language performance level of his or her peers." (Ed. Code, § 56333, subd. (d).) In California, a pupil has an expressive or receptive language disorder when he or she tests below an established level for his or her chronological level on standardized tests, and displays inappropriate or inadequate usage of expressive or receptive language as measured by a language sample. (Cal. Code Regs., tit. 5, § 3030, subd. (c)(4).)

23. Finally, in California, the assessment process requires the personnel who perform a district evaluation to prepare a written report. (Ed. Code, § 56327.) The report must contain the following content: (a) whether the pupil needs special education and related services; (b) the basis for such determination; (c) behavioral observations of the pupil; (d) the relationship of the observed behavior to the pupil's academic and social functioning; (e) educationally relevant health and development, and medical findings; (f) for pupils with learning disabilities, whether there is a discrepancy between achievement and ability that requires special education; and (g) if appropriate, a determination of the

effects of environmental, cultural or economic disadvantage. (Ed. Code, § 56327, subd. (a)-(g).)

ISSUE NO. 1: WAS THE DISTRICT'S PSYCHOEDUCATIONAL ASSESSMENT OF STUDENT APPROPRIATE?

24. The psychoeducational assessment performed by Griselda Flores was appropriate. This assessment satisfied the procedural requirements for an initial evaluation of a pupil referred for possible special education assistance.

25. Ms. Flores utilized a variety of assessment tools and strategies in her psychoeducational evaluation of Student. She administered two standardized tests of intellectual ability: the CTONI-2 and the BVAT. She administered the Bateria III to measure Student's level of academic achievement. She measured Student's auditory processing through administration of the TAPS-3:SBE. She measured Student's visual perceptual skills through the Beery VMI and the Beery VMI Developmental Test of Perception. She measured Student's adaptive behavior through administration of the Vineland II TRF, and his social and emotional functioning through administration of the BASC-2. She interviewed Student and observed him in a classroom. She interviewed Student's ELD Basics teacher, and obtained additional information from his other instructors. Through this assessment battery, Ms. Flores gathered relevant functional, developmental and academic information about Student, and assessed him in all areas of suspected disability. Her Psychoeducational Report provided relevant information that directly assisted the IEP team in determining Student's educational needs. The information from her psychoeducational evaluation permitted the IEP team, in making an eligibility determination, to draw upon a variety of sources concerning Student. The variety and scope of her assessment also ensured that the IEP team did not use any single measure or evaluation as the sole criterion in deciding whether Student was eligible for special education services. (Factual Findings, ¶¶ 19, 26, 30-66.)

26. Ms. Flores was qualified to perform the psychoeducational assessment of Student. She is a credentialed School Psychologist. She has performed numerous psychoeducational assessments, and the majority of such evaluations have involved pupils from diverse cultural backgrounds. She is fluent in Spanish and knowledgeable of the cultural diversity between English and Spanish speaking individuals. She is also knowledgeable about special education disabilities, including the category relating to specific learning disability. (Factual Findings, ¶¶ 30, 31.)

27. Ms. Flores utilized an assessment battery that was appropriate. The battery consisted of technically sound instruments, including the CTONI-2, the BVAT, the Vineland II TRF, the Beery VMI tests, the TAPS-3:SBE, the BASC-2, and the Bateria III. Where appropriate, Ms. Flores expressed caution with the interpretation of test results when Student was not included in the normative population of the assessment instrument. The battery consisted of assessments and materials that were valid for the intended purpose of the particular instrument. Ms. Flores utilized the assessment instruments in accordance with the instructions provided by the test producers. (Factual Findings, ¶¶ 19, 30-66.)

28. Ms. Flores utilized an assessment battery that was free of bias and that was designed to yield accurate information on Student's academic, developmental and functional skills. Except for the BVAT, Ms. Flores conducted the psychoeducational assessment of Student in Spanish which is his dominant language. Ms. Flores measured Student's cognitive abilities through the CTONI-2, a nonverbal test, in order to accommodate his English language limitations. Ms. Flores supplemented the CTONI-2 with administration of the BVAT, a verbal test that measured Student's combined Spanish and English verbal cognitive abilities. Ms. Flores tested Student's visual-motor skills through the Beery VMI, another nonverbal test. Ms. Flores requested Sara Martinez, the educator who had the most experience with Student at Garden Grove

High, to measure his adaptive behavior through the Vineland II TRF, and his social and emotional functioning through the BASC-2 Teacher Rating Scales. She administered the TAPS-3:SBE in Spanish to obtain an accurate measure of Student's auditory skills. She administered the Bateria III in Spanish to obtain an accurate measure of Student's level of academic achievement in the areas of reading, mathematics and writing. The global assessment conducted by Ms. Flores yielded consistent results. In every test and domain that touched upon ability and achievement, Student received low scores which were consistent with the conclusion reached by Ms. Flores that Student's limited school experience was the primary factor in his performance on standardized assessments. (Factual Findings, ¶¶ 4, 6, 7, 19, 30-66, 77.)

29. Student's limited educational background raised the issue of the effect of cultural disadvantage in the determination of his eligibility for special education. In her Psychoeducational Report, Ms. Flores provided information on this issue for the IEP team to consider. Specifically, Ms. Flores documented Student's self-report of his schooling in Honduras and at the group home in Arizona. Ms. Flores also reported that Student was Limited English Proficient and his Beginning level scores on the CELDT. (Factual Findings, ¶¶ 6, 7, 26, 39, 64-66.)

30. The Psychoeducational Report prepared by Ms. Flores was appropriate. The report made recommendations that Student was not eligible for special education under various disability categories. The report contained behavioral observations made by Ms. Flores during the course of her evaluation. In her report, Ms. Flores referenced assessments of Student performed by the school nurse and audiologist, and thereby contained educationally relevant health and development, and medical information. The report also contained information regarding the effects of Student's limited educational background upon his cognitive abilities, psychological processing and academic achievement. (Factual Findings, ¶¶ 33, 64, 65.)

31. Based upon the report and testimony of Dr. Fuentes, Student contends that the District's psychoeducational assessment was inappropriate because the CTONI-2 produced unreliable intelligence scores. In this regard, Student points to the test scatter between his scaled scores on the Geometric Analogies (1) subtest and his scaled scores on the Geometric Categories (8) and Geometric Sequences (12) subtests. Student also points to the scatter in the index scores between the Pictorial Scale Composite (67) and the Geometric Scale Composite (81). Student contends that, given such discrepant scores, Ms. Flores had a duty to conduct further testing of his intellectual ability. Despite such contentions, the CTONI-2 was appropriate for measuring Student's nonverbal intellectual abilities. Ms. Flores utilized this instrument based upon Student's limited language proficiency. She supplemented the CTONI-2 with administration of the BVAT which was a verbal measure of Student's bilingual verbal cognitive abilities. The scatter on the CTONI-2 was a reflection of Student's aptitude levels in different contexts. Ms. Flores did not err in the failure to conduct further testing because the results from her global assessment of Student were largely consistent. On every test of intellect, psychological processing and achievement, Student scored poorly. Based upon such consistent results, Ms. Flores acted reasonably in relying upon the CTONI-2 manual, which advised that a significant difference in index scores can result from inadequate schooling. (Factual Findings, ¶¶ 19, 30-71.)

32. Student contends that the District's psychoeducational assessment was inappropriate because Ms. Flores utilized the BVAT as a secondary measurement of his intellectual ability. Ms. Flores administered the BVAT, which measured Student's bilingual verbal cognitive abilities, as a compliment to the CTONI-2 which is a nonverbal measure of intelligence. In utilizing both instruments to measure Student's intellectual functioning, Ms. Flores complied with the requirements that she use technically sound assessment materials that are tailored to evaluate specific areas of educational need and

that are not designed to provide a single intelligence quotient. In addition, in utilizing both the CTONI-2 and BVAT, Ms. Flores appropriately exercised her prerogative of establishing an assessment battery that fully evaluated Student. (Factual Findings, ¶¶ 19, 30-33, 40-47.)

33. Student contends that the District performed an inappropriate psychological assessment because Ms. Flores dismissed the results of the Bateria III in favor of “qualitative” measures of achievement. Such qualitative measures included Student’s grades and the results of statewide testing, including the CELDT and CAHSEE. This contention is not well-taken. Ms. Flores performed a formal assessment of Student’s academic achievement through administration of the Bateria III. The results of this instrument provided information concerning Student’s educational needs and eligibility for special education under the category of specific learning disability. Ms. Flores also reported on Student’s academic achievement in terms of his performance in class at Garden Grove High and on statewide assessments. This information was important in providing a proper perspective of Student who, despite performing very poorly on the Bateria III, was showing gradual progress in his schoolwork. (Factual Findings, ¶¶ 5-16, 19, 30-33, 59-66.)

34. Student contends that the District failed to perform an appropriate psychoeducational assessment because Ms. Flores did not interview his Foster Mother as part of the evaluation. In actuality, Ms. Flores requested the opportunity to interview the Foster Mother, but Student’s attorney specifically rejected this request. Student cannot now claim that Ms. Flores erred in not interviewing the Foster Mother when consent for this contact was refused. Student also contends that Ms. Flores erred by not interviewing Student’s social worker, by not calling his biological parents in Honduras, and by not obtaining his educational records from Honduras and the group home in Arizona. Such contentions are consistent with the speculative nature of Student’s attacks

on the challenged assessments in this case. Student has provided no evidence that such sources would provide information that would contradict or undermine the results obtained by the District's assessors. (Factual Findings, ¶¶ 1-4, 17-23, 26, 33-34.)

35. Student contends that the District performed an inappropriate psychoeducational assessment because Ms. Flores failed to assess him in all areas of suspected disability. Relying upon the testimony of Dr. Fuentes, Student contends that Ms. Flores erred by not testing him in the areas of attention, executive functioning, memory and intellectual ability. In actuality, Ms. Flores performed a global assessment of Student that covered his intellectual functioning, psychological processing and academic achievement. Student's test scores were consistent across all areas. His Full Scale Composite on the CTONI-2 was 71 (poor range). His Bilingual Verbal Ability on the BVAT was 64 (very low range). His adaptive skills on the Vineland II TRF were 79 (moderately low range). His visual-motor skills on the Beery VMI were 74 (low range) and visual perceptual skills on the Beery VMI Developmental Test of Visual Perception were 70 (low range). His auditory processing skills on the TAPS-3:SBE were 81 (below average range). On the Bateria III, his Broad Reading score was 73 (low), his Broad Math score was 61 (very low), and his Broad Written Language Score was 63 (very low). With this level of consistency, Ms. Flores was justified in deciding that further assessments were not warranted, and in concluding that Student's test results were most likely caused by his limited educational background. (Factual Findings, ¶¶ 19, 30-66.)

36. Student contends that the District performed an inappropriate psychoeducational assessment because Ms. Flores evinced a cultural bias in her evaluation. In this regard, Student claims that Ms. Flores made inaccurate assumptions about the quality of his education in Honduras. In actuality, at the outset of the assessment process, Student's attorney informed Ms. Flores that "(Student) is 18 years old and needs to become independent." Ms. Flores honored this request and obtained

background information directly from Student. From him, Ms. Flores learned that Student attended school from ages six to 11 in a rural classroom. Student reported that he did not learn much because the teacher taught little. At the due process hearing, Student presented no evidence to show that his educational experience in Honduras was other than reported to Ms. Flores. The District's assessments of Student confirmed the paucity of his educational background. On the Bateria III, Student received a score in Broad Reading in the low range, and he received scores in Broad Math and Broad Writing in the very low range. Thus, at the time of the District evaluations, Student presented as a child who essentially was starting school from scratch, except that he was 18, living away from home and operating with extremely limited English language proficiency. Ms. Flores handled her assignment to assess Student with professionalism and competence. She performed a thorough evaluation and treated Student with respect. The charge that she exhibited a cultural bias in the psychoeducational assessment is groundless. (Factual Findings, ¶¶ 1-66, 74-95.)

37. The determination that the District performed an appropriate psychoeducational assessment of Student is supported by Factual Findings, paragraphs 1-71 and 74-95, and Legal Conclusions, paragraphs 4-21, 23, and 24-36.

ISSUE NO. 2: WAS THE DISTRICT'S SPEECH-LANGUAGE ASSESSMENT OF STUDENT APPROPRIATE?

38. The speech-language assessment performed by Cristian Paredes was appropriate. This evaluation satisfied the procedural requirements for an initial evaluation of a pupil referred for possible special education assistance.

39. Mr. Paredes utilized a variety of assessment tools and strategies in his speech-language evaluation of Student. He administered the CELF-4:Spanish on a formal basis. He administered on an informal basis the EOWPVT:SBE, the ROWPVT:SBE and the SPELT-2:Spanish. He completed an Interpersonal Communication Checklist and

Clinical Discourse Analysis. He prepared a Speech and Language Sample Analysis which summarized his findings regarding Student's language skills in the areas of morphology and syntax. He also tested Student's speech abilities. He interviewed Student and observed him during the course of his evaluation. Through this assessment battery, Mr. Paredes gathered relevant functional, developmental and academic information about Student. He provided relevant information that directly assisted the IEP team in determining Student's educational needs. The information from his assessment allowed the IEP team, in making an eligibility determination, to draw upon a variety of sources concerning Student. The variety and scope of his evaluation also ensured that the IEP team did not use any single measure or assessment as the sole criterion in determining whether Student was eligible for special education with a speech-language disorder. (Factual Findings, ¶¶ 72-96.)

40. Mr. Paredes was qualified to perform the speech-language assessment of Student. He is a licensed Speech-Language Pathologist. He has performed numerous speech-language evaluations, including bilingual assessments. He is fluent in Spanish. He has developed an assessment battery for use with bilingual pupils. He is knowledgeable of the cultural diversity between English and Spanish speaking individuals. He is knowledgeable of the disability category relating to speech and language disorders. He serves as a clinic supervisor for graduate students who are obtaining master's degrees in communication disorders. (Factual Findings, ¶¶ 72-75.)

41. Mr. Paredes utilized an assessment battery that was appropriate. The battery consisted of technically sound instruments, including the CELF-4:Spanish, the EOWPVT:SBE, the ROWPVT:SBE, and the SPELT-2:Spanish. The battery consisted of assessments and materials which were valid for the intended purpose of measuring Student's Spanish language skills. Mr. Paredes utilized the assessment instruments in accordance with the instructions provided by the test producer; in particular, Mr.

Paredes followed the protocols for the CELF-4:Spanish, the EOWPVT:SBE and the ROWPVT:SBE. Further, Mr. Paredes testified that he had experience utilizing the assessment battery in bilingual evaluations, and that he found that the battery was effective and yielded accurate results. (Factual Findings, ¶¶ 72-94.)

42. Mr. Paredes utilized an assessment battery that was free of bias and that was designed to yield accurate information on Student's academic and functional skills. Mr. Paredes conducted the speech-language assessment in Spanish which is Student's native language. Mr. Paredes administered an age-normed test, the CELF-4:Spanish, which formed the core of his assessment. Mr. Paredes then supplemented and corroborated the results from the CELF-4:Spanish with informal measures, including administration of the EOWPVT:SBE, the ROWPVT:SBE and the SPELT-2:Spanish, and completion of an Interpersonal Communication Checklist and Clinical Discourse Analysis. The different assessment measures portrayed a young man who speaks in grammatically correct sentences, who uses morphological and syntactical skills in an average manner when he converses, who displays appropriate interpersonal skills, but who scores below average to low average on measures that test his expressive and receptive language skills based principally upon his limited academic lexicon. This portrait is consistent with Student's educational background which consisted of a mere five years of schooling in a rural setting during his formative years. The portrait is also consistent with Student's scores in March 2009, on the Language Dominance Assessment (Spanish) which graded him "non-literate" in reading and "limited fluency" in the areas of oral language and writing. In the foregoing manner, the assessment battery utilized by Mr. Paredes satisfied the requirements that a school district must perform an evaluation that is tailored to assess specific areas of a pupil's educational need and that accurately reflects a pupil's aptitude and achievement level. (Factual Findings, ¶¶ 1-3, 6-8, 37, 39, 74-95.)

43. Student's limited educational background raised the issue of the effect of cultural disadvantage in the determination of his eligibility for special education. In his speech-language assessment, Mr. Paredes provided information on this issue for the IEP team to consider. He reported that Student did not have exposure to English while living in Honduras. On the CELF-4:Spanish, he concluded that Student's morpho-linguistic skills in the Spanish language reflected a lack of exposure to academia. From the informal test results on the EOWPVT:SBE and the ROWPVT:SBE, he concluded that Student has the vocabulary of a younger individual. (Factual Findings, ¶¶ 77, 78-85, 88-89.)

44. The initial request from Student's attorney for a special education evaluation requested the District to focus upon Student's speech and language needs. In his speech-language assessment, Mr. Paredes evaluated in all areas related to a suspected speech and language disability. In particular, he tested Student's skills in the areas of morphology and syntax through observation of Student and administration of the CELF-4:Spanish and SPELT-2:Spanish. He tested in the area of phonology through the Conocimiento Fonologico, a criterion based subtest that was part of the CELF-4:Spanish. He tested in the area of pragmatics through the Clasificacion Pragmatica, another criterion based subtest in the CELF-4:Spanish, and the Interpersonal Communication Checklist. He tested Student's usage of expressive and receptive language through observation of Student and administration of the CELF-4:Spanish and the EOWPVT:SBE and the ROWPVT:SBE. Through these different measures, Mr. Paredes satisfied the basic requirement of following procedures to help determine whether Student was a child with a disability. His test results also helped the IEP team determine Student's educational needs and whether he was eligible for special education assistance under the disability category of a speech-language impairment. (Factual Findings, ¶¶ 26, 72-96.)

45. The Speech-Language Report produced by Mr. Paredes was appropriate. The report made a recommendation that Student did not qualify for special education with a speech-language impairment based upon the level of his speech and language skills. The report contained behavioral observations made by Mr. Paredes during the course of his evaluation. To the extent that Mr. Paredes tested Student in the areas of articulation, vocal abilities and dysfluency, the report contained educationally relevant health and development, and medical information. The report also contained information regarding the effects of Student's cultural background on his educational level. (Factual Findings, ¶¶ 75, 95.)

46. Student contends that the District performed an inappropriate speech-language assessment because Mr. Paredes failed to administer the CELF-4:Spanish in a form most likely to yield accurate information of Student. In this regard, Student claims that Mr. Paredes erred by failing to administer the entire assessment instrument, and, given his low receptive language scores on the Clases de Palabras-Receptivo and Entendiendo Parrafos subtests, Mr. Paredes further erred by not conducting additional standardized tests in the area of receptive language. This contention is not well-taken. Student failed to present evidence showing the need for Mr. Paredes to administer every subtest in the CELF-4:Spanish. In this regard, Mr. Paredes was entitled to exercise his professional judgment in conducting the speech-language assessment of Student. In addition, Mr. Paredes did perform informal measures of Student's expressive and receptive language skills through the EOWPVT:SBE and the ROWPVT:SBE. (Factual Findings, ¶¶ 72-75, 78-85, 88-89.)

47. Student further contends that Mr. Paredes failed to administer the CELF-4:Spanish in a form likely to yield accurate information because he did not complete the entire Clasificacion Pragmatica criterion based subtest. On this subtest, Mr. Paredes scored Student in the borderline range for social interactions, but qualified this result by

noting that he was not able to rate certain items because he did not observe Student in his classrooms. This contention lacks merit, principally because, at a later date, Mr. Paredes did observe Student in the classroom environment, completed the subtest, and determined that Student met the criterion. In addition, beyond the Clasificación Pragmática, Mr. Paredes further assessed Student's social language skills. Mr. Paredes completed an Interpersonal Communication Checklist from which he concluded that Student presented with appropriate interpersonal skills. (Factual Findings, ¶¶ 74-75, 78, 87, 91, 95.)

48. Student contends that the District performed an improper speech-language assessment because Mr. Paredes failed to determine whether Student displayed inappropriate or inadequate usage of expressive or receptive language through a spontaneous or elicited language sample of a minimum of 50 utterances. (See Cal. Code Regs., tit. 5, § 3030, subd. (c)(4)(B).) This contention lacks merit. In administering the CELF-4:Spanish, Mr. Paredes did not utilize a "language sample." However, he did utilize subtests which contained well over 100 words and phrases. In addition, Mr. Paredes supplemented the results of the Clases de Palabras-Receptivo and Clases de Palabras-Expresivo subtests from the CELF-4:Spanish, with informal testing through the EOWPVT:SBE and ROWPVT:SBE. In total, the speech-language assessment conducted by Mr. Paredes provided sufficient information for the IEP team to decide whether Student had a language disorder in the areas of morphology, syntax, semantics and pragmatics. (See Cal. Code Regs., tit. 5, § 3030, subd. (c)(4)(A).) (Factual Findings, ¶¶ 26, 72-96.)

49. Student contends that the District performed an inappropriate speech-language assessment because Mr. Paredes utilized measures that were not valid and reliable. Specifically, Student complains that Mr. Paredes used three instruments that were not normed for Student's age: the EOWPVT:SBE, the ROWPVT:SBE, and the SPELT-

2:Spanish. This contention lacks merit. Mr. Paredes testified that it is permissible practice for a speech-language pathologist to utilize such instruments as informal assessment measures. (Factual Findings, ¶¶ 72-73, 88-90, 97.)

50. Student contends that the District performed an inappropriate speech-language assessment because Mr. Paredes failed to utilize a variety of assessment tools and strategies. Specifically, Student complains that Mr. Paredes did not interview his Foster Mother and social worker, failed to speak with any of his instructors at Garden Grove High, and failed to observe him in his classrooms. However, Student did not give consent for Mr. Paredes to interview his Foster Mother. Student presented no evidence showing that his social worker had relevant information to inform the speech-language assessment. In addition, Mr. Paredes gained an adequate understanding and measurement of Student's speech and language abilities without a classroom observation and discussion with his instructors. (Factual Findings, ¶¶ 1, 4, 17-26, 72-96.)

51. The determination that the District performed an appropriate speech-language assessment of Student is supported by Factual Findings, paragraphs 1-4, 5-28, 33, 39, 64-65, and 72-97, and Legal Conclusions, paragraphs 4-20, 22, 23, and 38-51.

ORDER

The psychoeducational assessment and speech-language assessment of Student performed by the Garden Grove Unified School District were appropriate. Student is not entitled to receive at public expense independent education evaluations regarding such assessments.

PREVAILING PARTY

The decision in a special education administrative due process proceeding must indicate the extent to which each party prevailed on the issues heard and decided. (Ed.

Code, § 56507, subd. (d).) The District prevailed on the issues heard and decided in this case.

RIGHT TO APPEAL

The parties in this case have the right to appeal this Decision by bringing a civil action in a court of competent jurisdiction. (20 U.S.C. § 1415(i)(2)(A); 34 C.F.R. § 300.516(a)(2006); Ed. Code, § 56505, subd. (k).) An appeal or civil action must be brought within 90 days of the receipt of the Decision. (20 U.S.C. § 1415(i)(2)(B); 34 C.F.R. § 300.516(b)(2006); Ed. Code, § 56505, subd. (k).)

Dated: September 23, 2010



TIMOTHY L. NEWLOVE

Administrative Law Judge

Office of Administrative Hearings