

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

THE CONSOLIDATED MATTERS INVOLVING:
PARENT ON BEHALF OF STUDENT, AND
BONITA UNIFIED SCHOOL DISTRICT.

CASE NO. 2023040205

CASE NO. 2023040004

DECISION

October 04, 2023

On March 29, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Bonita Unified School District, called Bonita Unified, naming Student. A due process hearing request is called a complaint. On April 4, 2023, Parent on behalf of Student filed a complaint naming Bonita Unified. On April 11, 2023, OAH consolidated the cases, and ordered the timeline for issuing the decision in the consolidated cases would be based on filing date of Student's complaint. On May 12, 2023, OAH granted Bonita Unified's request to continue the due process hearing. Administrative Law Judge Jennifer Kelly heard the matter via videoconference on July 18, 19, and 20, and August 1, 2, 3, 8, 9, 17, and 29, 2023.

Attorney Diane B. Weissburg represented Student, assisted by paralegal Kim Vokolek. Parent attended all hearing days on Student's behalf. Student did not attend

the hearing but participated as a witness. Attorney Kristin M. Myers represented Bonita Unified. Bonita Unified's Senior Director of Specialized Services, Danielle Walker, attended all hearing days on Bonita Unified's behalf.

At the parties' request, OAH continued the matter for written closing briefs. OAH closed the record and submitted the matter on September 20, 2023.

STUDENT'S ISSUES

A free appropriate education is called a FAPE. An individualized education program is called an IEP. Bonita Unified's issues have been reorganized for clarity.

1. Did Bonita Unified deny Student a FAPE by failing to:
 - A. appropriately conduct its October 11, 2022, psychoeducational assessment pursuant to the June 30, 2022, and August 8, 2022, assessment plans; and
 - B. assess Student in all areas of suspected disability pursuant to the June 30, 2022, and August 8, 2022, assessment plans?
2. Did Bonita Unified deny Student a FAPE by failing to appropriately conduct its October 11, 2022, speech and language assessment?

BONITA UNIFIED'S ISSUES

3. Was Bonita Unified's October 11, 2022, psychoeducational evaluation appropriate such that Bonita Unified is not required to fund an independent neuropsychological evaluation at public expense?

4. Was Bonita Unified's October 11, 2022 speech and language evaluation appropriate such that Bonita Unified is not required to fund an independent speech and language evaluation at public expense?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) and (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528,

163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Each party had the burden of proof as to their respective issues. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 11 years old and entering sixth grade at the time of the hearing. Student resided within Bonita Unified's geographic boundaries. Student attended Oak Mesa Elementary School within Bonita Unified's boundaries through an intra-district transfer. Student qualified for special education under the primary category of specific learning disability and secondary category of other health impairment pursuant to Student's last agreed upon IEP dated April 7, 2022, as amended on May 31, 2022.

BACKGROUND AND JULY 19, 2021 PRIOR OAH DECISION

Student was originally found eligible for special education on February 15, 2015, at age three under the eligibility category of speech and language impairment. Student had a subsequent medical diagnosis of attention and concentration deficit and social anxiety. In an April 2017 psychoeducational evaluation, Bonita Unified determined Student had phonological memory deficits impacting her reading ability, including reading comprehension and fluency. Student continued to exhibit phonological memory deficits in an October 2020 three-year psychoeducational reevaluation.

A dispute arose between Parent and Bonita Unified about the appropriateness of Student's educational program offered by Bonita Unified at an IEP team meeting that commenced on May 22, 2020. The IEP team meeting reconvened seven times

and concluded on January 22, 2021. Prior to Student's May 22, 2020 IEP team meeting, Parent obtained independent evaluations in various areas, including audiology and vision processing, reading, and occupational therapy.

Specifically, on October 13, 2018 private audiologist Bea Braun diagnosed Student with central auditory processing disorder due to deficits in auditory integration and decoding. Dr. Braun recommended a dichotic listening training program, known as CAPDOTS, be administered at school 15 minutes daily. Dr. Braun also made several recommendations for classroom strategies, including preferential seating, noise reduction, repetition, and extra time to complete tasks. On May 10, 2019, Student's IEP team considered Dr. Braun's evaluation. Dr. Braun conducted an auditory retest and issued a report on May 22, 2020. The results of this retest indicated Student continued to have deficits in auditory decoding.

In vision processing, optometrist Dr. Beth Ballinger conducted visual perceptual testing for Student between October 24, 2020, and December 16, 2020, and issued a December 31, 2020, written report. Dr. Ballinger found Student had deficits in various areas, including eye teaming, visual discrimination, and visual recall. Dr. Ballinger attended a January 5, 2021, IEP team meeting to review her private assessment and present her December 31, 2020 report. Dr. Ballinger recommended Student receive a minimum of 40, one hour in-office visits plus five progress evaluations, consisting of one-on-one vision therapy services. Dr. Ballinger also recommended a number of accommodations for Student, such as a quiet environment with minimal physical distractions, visual breaks from academic demands, a slant board for copying and reading, and additional time to complete assignments and tests.

Student believed Bonita Unified's offer of FAPE in the May 22, 2020, IEP, as amended on January 22, 2021, was inappropriate because, among other issues, Bonita Unified did not properly consider or adopt Dr. Braun's and Dr. Ballinger's recommendations. Bonita Unified believed its FAPE offer was appropriate to meet Student's educational needs.

On March 8, 2021, Student filed a due process hearing request with OAH naming Bonita Unified, which alleged seven claims, including that Bonita Unified denied Student a FAPE by failing to adopt Drs. Braun and Ballinger's recommendations. On April 5, 2021, Bonita Unified filed a complaint naming Parent on behalf of Student. OAH consolidated the two complaints on April 22, 2021. OAH heard the consolidated matter, designated as case numbers 2021040572 and 2021030295, in May 2021. OAH adjudicated one issue filed by Bonita Unified, and seven issues filed by Student. OAH issued a written decision on July 19, 2021, called Prior OAH Decision. (*Bonita Unified School District v. Student* (2021) OAH Case Nos. 2021040572 and 2021030295.)

The United States District Court for the Central District of California upheld the Prior OAH Decision in its entirety by an Order Reviewing ALJ Decision dated December 28, 2022. (*J.B., et al., v. Bonita Unified School District* (C.D.Cal. Dec. 28, 2022) 2:21-cv-07355-SB-E.) This Decision takes official notice of the Prior OAH Decision to prevent re-litigation of issues and inconsistent findings. (Gov. Code, § 11515.)

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STUDENT'S PROGRAM AT THE TIME OF THE OCTOBER 11, 2022, PSYCHOEDUCATIONAL EVALUATION

Neither party introduced Student's last consented to and implemented IEP in effect at the time of the October 2022 reevaluation. However, Parent, the school psychologist, and Student's general and special education teachers testified about Student's special education services at the time of the October 2022 evaluation. Student received the following services:

- 150 minutes weekly specialized academic instruction in a group setting through a pull-out model;
- 30 minutes weekly language and speech services in a small group setting;
- 30 minutes weekly language and speech services in an individual setting; and
- 30 minutes weekly individual counseling.

Student also received general education reading intervention in the regular classroom by general education teacher Isabelle Lawless three times weekly, for 30 minutes each session. She participated in a math intervention group five days weekly, for 60 minutes each session, taught by general education teacher Audrey Shendrick.

REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATIONS

A parent may request an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) & (2); Ed. Code, §§ 56329, subd. (b), 56506, subd.

(c.) An independent educational evaluation means an evaluation conducted by a qualified examiner not employed by the public agency responsible for educating the child. (34 C.F.R. § 300.502(a)(3)(i).)

In response to a request for an independent educational evaluation, a school district must, without unnecessary delay, either file a request for due process hearing to show that its evaluation was appropriate or provide the independent educational evaluation at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code, § 56329, subd. (b) and (c); *Baquerizo v. Garden Grove Unified Sch. Dist.* (9th Cir. 2016) 826 F.3d 1179, 1185.) If the school district proves in a due process hearing that its assessment was appropriate, the school district is not required to fund an independent educational evaluation. (34 C.F.R. § 300.502(b)(3); Ed. Code, § 56329, subd. (c).)

Bonita held IEP team meetings on October 17, 2022, December 7, 2022, and January 20, 2023, to review Student's October 11, 2022 psychoeducational and speech and language evaluations and develop an IEP. Parent and her attorneys attended the meetings. Parent disagreed with the adequacy of Bonita's psychoeducational and speech and language assessments. Specifically, Parent believed Bonita failed to adequately assess Student in the areas of phonological and visual processing, and speech and language, including articulation and Student's inability to say multisyllabic words. On February 24, 2023, Parent requested independent neuropsychological and speech and language evaluations.

Senior Director of Specialized Education Danielle Walker testified Bonita Unified interpreted Parent's request for an independent neuropsychological evaluation to mean she disagreed with the psychoeducational evaluation; the most recent evaluation conducted.

On March 10, 2023, Bonita Unified provided Parent with a prior written notice of its decision to deny Parent's request to fund independent neuropsychological and speech and language evaluations. Bonita Unified informed Parent it would file a due process hearing request to defend the appropriateness of the psychoeducational evaluation, including auditory and visual processing components, and speech and language assessment.

Bonita Unified filed a request for due process hearing on March 29, 2023, to defend the appropriateness of its psychoeducational and speech and language evaluations; four weeks after Parent notified Bonita of her request for independent educational evaluations. (Ed. Code, § 56329; *see J.P. v Ripon Unified Sch. Dist.* (E.D. Cal. 2009) 2009 WL 1034993.)

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STUDENT'S ISSUE 1(A): DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO APPROPRIATELY CONDUCT ITS OCTOBER 11, 2022, PSYCHOEDUCATIONAL ASSESSMENT PURSUANT TO THE JUNE 30, 2022, AND AUGUST 8, 2022, ASSESSMENT PLANS?

STUDENT'S ISSUE 1(B): DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY PURSUANT TO THE JUNE 30, 2022, AND AUGUST 8, 2022, ASSESSMENT PLANS?

BONITA UNIFIED'S ISSUE 3: WAS BONITA UNIFIED'S OCTOBER 11, 2022, PSYCHOEDUCATIONAL EVALUATION APPROPRIATE SUCH THAT BONITA UNIFIED IS NOT REQUIRED TO FUND AN INDEPENDENT NEUROPSYCHOLOGICAL EVALUATION AT PUBLIC EXPENSE?

Student's Issues 1A and 1B and Bonita Unified's Issue 3 are addressed together because the factual and legal findings for these issues are substantially similar. Student contends in Issue 1A that the October 11, 2022, psychoeducational assessment was insufficient because it did not appropriately assess Student's needs in visual, auditory, and phonological processing. Student further contends Bonita Unified failed to consider information from Student's private evaluators Dr. Braun and Dr. Ballinger, and private academic tutor Elisa Edgar. Student asserts Bonita Unified did not understand Student's academic difficulties, specifically Student's performance on classroom based and California standardized testing in reading and mathematics.

Student contends in Issue 1B that Bonita failed to evaluate whether Student benefited from a push-in or pull-out model for delivery of specialized academic instruction. Therefore, Student argues she is entitled to a publicly funded neuropsychological evaluation.

Bonita Unified contends its October 11, 2022, psychoeducational assessment met all legal requirements. Bonita Unified contends it appropriately assessed Student in all areas of suspected disability, including

- intellectual development,
- academics,
- speech and language,
- adaptive behavior,
- auditory and phonological processing, and
- attention processing.

Bonita Unified contends it knew Dr. Braun previously diagnosed Student with an auditory processing disorder, considered Dr. Braun's diagnosis in its October 2022 psychoeducational evaluation, and conducted additional auditory and phonological processing testing. Bonita Unified further contends the IEP team had sufficient information about Student's auditory and phonological processing needs to develop Student's educational program. Bonita Unified asserts it had adequate information about Student's visual processing needs, and therefore it was not required to conduct additional assessments in visual processing. Therefore, Bonita Unified argues Student is not entitled to an independent neuropsychological evaluation at public expense.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent. (20

U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon the IDEA and state law. (20 U.S.C. §§ 1401(14), 1414(d)(1); Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321, and 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

In evaluating a child for special education eligibility and prior to the development of an IEP, a district must assess in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) A school district's failure to appropriately assess a child may constitute a violation of the IDEA. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1031-1033 (*Park*).) However, a procedural violation results in a denial of FAPE only if the violation:

1. impeded the child's right to a FAPE;
2. significantly impeded the parents' opportunity to participate in the decision-making process; or
3. caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); *W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, Missoula Mont.* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*), superseded in part by statute on other grounds.)

BONITA UNIFIED TIMELY RESPONDED TO PARENT'S REQUEST FOR ASSESSMENT WITH AN APPROPRIATE NOTICE AND ASSESSMENT PLAN, TIMELY ASSESSED, AND HELD IEP TEAM MEETINGS TO REVIEW THE ASSESSMENT

School district evaluations of students with disabilities under the IDEA serve two purposes:

1. identifying students who need specialized academic instruction and related services because of an IDEA-eligible disability, and
2. helping IEP teams identify the special education and related services the student requires. (20 U.S.C. § 1414(a); 34 C.F.R. §§ 300.301, 300.303.)

The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of a student's education. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).) Assessments also determine the type, frequency, and duration of specialized instruction and related services. (34 C.F.R. § 300.320(a)(7).) The IDEA uses the term "evaluation," while the California Education Code uses the term "assessment." In this Decision, the terms mean the same thing and are used interchangeably. (34 C.F.R. § 300.300; Ed. Code, § 56302.5.)

A student receiving special education services must be reassessed at least once every three years, unless the parent and the school district agree in writing that it is not necessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted if the school district determines the educational or related service needs, including improved academic achievement and

functional performance, of the student warrant a reassessment, or if the student's parents or teachers request a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

An assessment or reassessment of a student may not be conducted unless the school district provides proper notice to the student or her parents. (20 U.S.C. §§ 1414(b)(1) & (c)(3); 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(c)(i); Ed. Code, § 56321, subd. (a).) The assessment plan must be in language easily understood by the general public and provided in the parent's native language. (Ed. Code, § 56321, subd. (b)(i), (ii).) The assessment plan must explain the assessments the district proposes to conduct, and that the district will not implement an IEP without the parent's consent. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subds. (b)(1)-(4).)

In addition to the assessment plan requirements under Education Code section 56321, the proposed written assessment plan must include a description of any recent assessments conducted, including any available independent assessments and any assessment information the parent requests to be considered, and information indicating the student's primary language and language proficiency in their primary language. (Cal. Code Regs., tit. 5, § 3022.) The assessment plan must advise the parent that an IEP team meeting will be scheduled to discuss the assessment results and recommendations. (Ed. Code, § 56329, subd. (a)(1).) Parents must be informed they have the right to obtain, at public expense, an independent educational assessment under certain circumstances, and explain the procedure for requesting such an assessment. (Ed. Code, § 56329, subd. (b).)

The school district must give the parent a proposed assessment plan within 15 days of a referral for assessment not counting days between the student's regular school sessions or terms or days of school vacation in excess of five schooldays from the date of receipt of the referral, unless the parent agrees, in writing, to an extension. (Ed. Code, § 56321, subd. (a). However, in any event, the assessment plan shall be developed within 10 days after the commencement of the regular school year. (*Ibid.*) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan, unless the parent or guardian agrees in writing to an extension. (Ed. Code, §§ 56043, subd. (a); 56321, subd. (a), 56381, subd. (f)(1); 56506, subd. (e); 20 U.S.C. § 1414(b)(1).) The assessment must be completed, and an IEP team meeting held to discuss the results of the reassessment, within 60 days of the date the school district receives the signed assessment plan, not including school breaks of five days or more. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed. Code, § 56043, subd. (f)(1).)

At the time of hearing, Student's last agreed upon IEP was an April 7, 2022 IEP, as amended on May 31, 2022. On June 17, 2022, Parent consented to the amended April 7, 2022 IEP. Concurrently with granting consent to the April 7, 2022 IEP on June 17, 2022, Parent requested that Bonita Unified conduct a psychoeducational assessment. A psychoeducational evaluation is a comprehensive assessment of a student's academic, cognitive, and social emotional functioning. The IEP team uses it to determine a student's eligibility for special education and, following an eligibility determination, to update present levels of the student's functioning. (20 U.S.C. § 1414(b)(4); Ed. Code, § 56026.). A psychoeducational evaluation must be conducted by a credentialed school psychologist. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).)

Parent made the referral request after the 2021-2022 regular school year ended on June 9, 2022. Therefore, Bonita Unified was required to develop the assessment plan within 10 days after the commencement of the 2022-2023 regular school year, which began on August 22, 2022. (Ed. Code, § 56321, subd. (a).) Bonita Unified timely issued an assessment plan on June 30, 2022. Student's three-year reassessment was due in May 2023. Bonita Unified proposed to conduct a psychoeducational evaluation and advance the three-year reassessment to an earlier date. Bonita Unified proposed to update all areas of need. The assessment plan expressly stated the reassessment would include the areas notated by checked boxes. The assessment plan proposed to assess Student in academic achievement, health, intellectual development, language and speech communication development, and social emotional behavior.

Parent signed and returned the June 30, 2022, assessment plan on July 6, 2022. Parent checked a box stating she wanted the "following information to be considered by the IEP" and hand wrote the names, "Dr. Ballinger, Dr. Baker, Dr. Braun, and Lindamood Bell."

School psychologist Kari Hadjis conducted Student's psychoeducational evaluation. Hadjis was a credentialed school psychologist and had the necessary training and knowledge to assess Student. Hadjis was a school psychologist for 19 years during which time she conducted over 500 psychoeducational assessments. Hadjis held a master's degree in education and a bachelor's degree in psychology. Hadjis had substantial experience working with a wide range of student populations, including students with severe and low-incidence disabilities, autism, specific learning disabilities, and other health impairment.

Hadjis reviewed the June 30, 2022, assessment plan when she returned from the summer break on or before August 8, 2022. Hadjis did not believe the plan covered all areas of Student's suspected needs. Specifically, Hadjis determined Student required assessments in auditory and phonological processing and attention processing. A specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. Processing deficits may manifest in the imperfect ability to listen, think, speak, write, spell, or do mathematical calculations. (34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5. § 3030(b)(10).) Because Student was eligible for special education for a specific learning disability, Hadjis opined reassessment was required in phonological and attention processing.

Based upon her review of Student's April 7, 2022 IEP and educational records, Hadjis understood Parent had concerns about Student's needs in adaptive behavior. Parent believed Student had difficulties in organizing her homework, maintaining personal hygiene, and opening jars. Hadjis determined an adaptive behavior assessment was necessary and added this to the assessment plan. Hadjis also determined Parent had previously expressed concerns about Student's inattention and had a previous medical diagnosis of attention deficit hyperactivity disorder. Hadjis determined Student's needs in attention also required reassessment.

Hadjis revised the assessment plan on August 8, 2022, to add assessments in auditory and phonological processing, attention processing, and adaptive behavior and sent it to Parent. The August 8, 2022, assessment plan stated Student only would be

evaluated in the areas identified in the checked boxes. The August 8, 2022, assessment plan explained the assessments Bonita Unified sought to conduct. The assessment plan proposed to evaluate Student in

- academic achievement,
- health,
- intellectual development,
- language and speech communication development,
- social emotional behavior,
- adaptive behavior,
- auditory and phonological processing, and
- attention processing.

It stated a school psychologist would assess Student's

- academic achievement,
- intellectual development,
- social emotional functioning,
- adaptive behavior,
- auditory and phonological processing, and
- attention processing. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).)

The assessment plan provided the psychoeducational assessment would include a review of records, observations, and interviews. It stated the assessors would use standardized tests, interviews, record review, and observations, and an IEP team would review the assessments before a program was proposed and, with Parent's consent, implemented. (34 C.F.R. § 300.300(a)(ii); Ed. Code, § 56321, subd. (b)(1)-(4).)

Bonita Unified's revised August 8, 2022, assessment plan to conduct Student's three-year review assessments met all legal requirements. The assessment plan was written in English, Parent's native language. The plan described the possible tests and procedures to be conducted. The plan was written plainly, and in terms understandable by the general public. The plan expressly stated no special education services would be provided to Student without Parent's written consent.

Parent signed and returned the updated August 8, 2022, assessment plan. Parent made no substantive changes to the plan. However, Parent changed the date of the assessment plan from August 8, 2022, to June 30, 2022. Bonita Unified received Parent's consent on August 17, 2022.

At hearing, the evidence established the August 8, 2022, assessment plan replaced the June 30, 2022 assessment plan and triggered Bonita Unified's obligation to timely assess Student. The first day of school for the 2022-2023 school year was August 22, 2022. Bonita Unified proved it timely assessed Student in the areas delineated on the August 8, 2022, assessment plan by the professionals specified in the plan. Bonita Unified held an initial IEP team meeting on October 17, 2022, within 60 days of receiving Parent's consent to the August 8, 2022, assessment plan on August 17, 2022. Bonita Unified's assessment was also timely under the June 30, 2022 assessment plan, because Bonita Unified held an IEP team meeting within 60 days of its receipt of

the June 30, 2022 assessment plan on July 6, 2022, not including school breaks of five days or more. (20 U.S.C. § 1414(a)(1)(C); 34 C.F.R. § 300.301(c)(1)(i), (ii); Ed. Code, § 56043, subd. (f)(1).)

The IEP team did not complete its review of the psychoeducational assessment at the October 17, 2022, IEP team meeting, and Bonita Unified held continuation IEP team meetings on December 7, 2022, and January 20, 2023. Bonita Unified provided Parent with the reports and discussed the reports, assessment findings, and recommendations at the IEP team meetings, each of which Parent and her attorney attended. Bonita Unified proved by a preponderance of the evidence it complied with the procedural requirements for providing notice, and obtaining parental consent for the assessments, timely conducted the assessments, and held IEP team meetings to discuss the assessment reports and results.

THE OCTOBER 11, 2022, PSYCHOEDUCATIONAL ASSESSMENT MET ALL LEGAL REQUIREMENTS

Bonita Unified proved by a preponderance of the evidence that it appropriately conducted its October 11, 2022, psychoeducational assessment pursuant to the August 8, 2022, assessment plan. Student did not offer persuasive evidence challenging the appropriateness of the psychoeducational evaluation.

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In performing a reassessment, an IEP team and other qualified professionals must review existing assessment data on the child, including:

- evaluations and information provided by the child's parents;
- current classroom-based, local, or state assessments and classroom-based observations; and
- observations by teachers and related services providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1); Ed. Code, § 56381, subd. (b)(1).)

Based upon its review of existing data and parental input, the district must identify what additional data, if any, is needed to determine:

- in the case of a reevaluation of a child, whether the child continues to have a disability, and the educational needs of the child;
- the present levels of academic achievement and related developmental needs of the child;
- whether the child continues to need special education and related services; and
- whether any additions or modifications to the child's special education and related services are needed to enable the child to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate in the general education curriculum. (20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.305(a)(2)(i)–(iv); Ed. Code, § 56381, subd. (b)(2).)

The IDEA does not mandate that a school district administer additional testing as part of a reevaluation. (20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d).)

QUALIFIED ASSESSORS AND ASSESSMENT TOOLS

School districts must follow statutory guidelines for the qualifications of the assessors and the contents of the assessments. Assessments must be conducted by individuals knowledgeable about the student's disability and competent to perform the assessment, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

School districts must ensure that an evaluation:

- uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
- does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and
- uses technically sound instruments that may assess the relative contribution of cognitive and behavior factors, in addition to physical or developmental factors. (20 U.S.C. § 1414(b)(2)(A)-(C); 34 C.F.R. § 300.304(b); Ed. Code, § 56320.)

An evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability

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of the child. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (f).) Further, the student must be assessed in all areas related to a 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); Ed. Code, § 56320, subd. (f).)

The determination of what tests are required is based on information known at the time. (See *Vasheresse v. Laguna Salada Union School Dist.* (N.D.Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech and language testing where the concern prompting the assessment was reading skills deficit]; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 [In analyzing a failure to assess claim, the action of a school district must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight].)

Tests and assessment materials must be used for the purposes for which they are valid and reliable and must be administered by trained personnel in conformance with the instructions provided by the producer of such test. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v);

34 C.F.R. § 300.304(c)(1)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory, and must be administered in the student's primary language or other mode of communication, unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i), (ii); 34 C.F.R. § 300.304(c)(1)(i), (ii); Ed. Code, § 56320, subd. (a).)

Experienced and credentialed school psychologist Hadjis assessed Student in all areas of suspected disability, with the exception of speech and language discussed below in Student's Issue 2 and Bonita Unified's Issue 4. Specifically, Hadjis considered whether Student met eligibility under criteria for specific learning disability and other health impairment. Hadjis was knowledgeable about Student's disabilities and competent to perform the psychoeducational assessment based on her education, training, and experience. Hadjis's education, training and experience, and her familiarity with Student's assessment results, rendered her opinions persuasive. Hadjis's opinions were supported by multiple standardized instrument results and corroborated by teacher and Parent input, observations, and Student's educational performance. At hearing, Hadjis answered questions candidly and exhibited a strong understanding of the assessment procedures. Hadjis's demeanor was forthcoming and she patiently and non-defensively answered questions posed by Parent's attorney to discredit her, including questions about Student's deficits in auditory and phonological processing.

RECORDS REVIEW, INTERVIEWS, AND OBSERVATIONS

Bonita Unified established its psychoeducational assessment was based on relevant functional, developmental, and academic information about Student using a variety of assessment tools. Hadjis chose a variety of assessment tools to conduct

Student's psychoeducational assessment, including standardized tests, rating scales, and observations of Student in the classroom setting and during assessments. Hadjis conducted interviews with Student, Parent, and Student's special education and general education teachers. Hadjis reviewed Student's educational records, including grades and classroom-based testing scores, Student's health records, private evaluations, and a list of concerns provided by Parent. Hadjis selected the assessment tools based on Student's academic, developmental, and functional capabilities.

Hadjis reviewed Bonita Unified's prior assessments of Student. Hadjis also considered Dr. Braun's and Dr. Ballinger's reports and additional private evaluations obtained by Parent that were considered by a prior IEP team and litigated in the Prior OAH Decision.

Hadjis reviewed a health screening conducted by registered school nurse Brian Iavicoli. Iavicoli conducted an interview with Parent and reviewed Student's prior health records. Iavicoli conducted Student's hearing and vision screening on October 4, 2022. Student passed both the hearing and vision screenings. Iavicoli created a written report which Hadjis incorporated into the psychoeducational report. Iavicoli reported Student had no health concerns impacting her education. Iavicoli noted Student was followed by Dr. Braun due to deficits in dichotic listening, temporal processing, sound blending, and low redundancy speech perception. Parent reported to Iavicoli Student continued to work on the CAPDOTS auditory processing program and would be evaluated upon completion of the program. Iavicoli noted Dr. Ballinger's findings of saccadic eye movement, focusing flexibility, eye teaming, and visual discrimination. No other health concerns were identified or reported. Parent did not dispute the health screening and it was not at issue in this case.

Hadjis interviewed Student during testing. Student shared she enjoyed going to amusement parks and was active in Girl Scouts.

Parent provided input for the assessment through emails and an in-person interview. Hadjis met with Parent in September 2022 for approximately 45 minutes. Parent had numerous concerns about Student, which Hadjis incorporated into her psychoeducational report. Parent relayed Student struggled in reading, writing, and math. Student had difficulty expressing her thoughts through words, pronouncing multisyllabic words, and forming long sentences. Parent communicated Student was sensitive to loud noises and brightness, was anxious about attending school, and could not independently do homework, put on her clothes, or open jars.

During the assessment, Student's teachers did not share the same concerns as Parent. Student's general education teacher Maricar Leahy reported to Hadjis that Student worked hard to complete her assignments and, when necessary, asked for more time to complete assignments. She paid attention in class and followed instructions. Student liked to help organize papers and share facts with her teacher and friends. Leahy reported concerns about Student's below grade level scores in English language arts and math STAR testing. STAR was a computer-based reading and math screening measure which compared a student's performance with other same-aged students. Student participated in general education reading and math intervention groups. Student benefitted from using a multiplication chart while working on mathematical problems and sitting near the instructor. Student worked independently to solve math word problems with minimal prompting.

During the evaluation process, special education teacher Claudia Castro described Student's behavior as excellent. Student followed classroom routines and

timely completed her assignments. Student was respectful to adults and peers in the general education and special education settings. Student sometimes needed two to three prompts to stay on task during small group specialized academic instruction. Student asked questions for clarification. Castro described Student as learning visually, phonologically, and in writing. Student used color coding to complete her graphic organizer. She listened to articles, read them, and highlighted important information.

Hadjis observed Student in the classroom on two occasions. On both occasions, Student participated in the classroom activities, followed her teacher's directions, and demonstrated appropriate peer interactions. Hadjis observed Student in her math class for approximately 20 minutes. Student paid attention to her teacher during a math review. Hadjis observed Student for 40 minutes during a science class. Student did not raise her hand to participate in a whole group discussion. She interacted with her peers and cleaned up her workspace without prompting.

Hadjis also considered observations of Student by Iavicoli in an unstructured setting. Iavicoli observed Student for 35 minutes during her physical education class. Student ran and interacted with two classmates. She participated in all activities, including stretching and playing baseball and tennis.

During testing, Student worked diligently to complete the tasks. Student needed additional time to respond to some test questions, and asked questions when she needed directions repeated. Student reported that math was somewhat hard for her. She readily answered all questions.

VALID SELECTION AND ADMINISTRATION OF TESTING INSTRUMENTS

Hadjis administered the following standardized tests and rating scales over five sessions between August 29, 2022, and October 10, 2022:

- Kaufman Brief Intelligence Test, Second Edition;
- Kaufman Test of Educational Achievement, Third Edition;
- Comprehensive Test of Phonological Processing, Second Edition; and
- Behavior Assessment Scale for Children, Third Edition.

The testing instruments were selected to evaluate specific areas of Student's suspected needs, administered by a qualified assessor in accordance with the instructions provided by the producers of the tests, and relied on for the purposes for which the tests were designed. The testing instruments were administered in Student's primary language, English, were validated and properly normed, and not racially, culturally, or sexually discriminatory.

BONITA UNIFIED'S ACADEMIC ASSESSMENT WAS APPROPRIATE

The academic assessment administered as part of Student's October 2022 psychoeducational evaluation was appropriate. Hadjis was competent to administer, score, and interpret the results from the Kaufmann Test of Educational Achievement to assess Student's academic achievement. She previously administered the Kaufmann Test of Educational Achievement approximately 80 times. She administered the test to Student and interpreted the results in accordance with the publisher's protocols, yielding valid results.

The Kaufman Test of Educational Achievement was an individually administered, norm-referenced measure of academic achievement. It assessed students ages four through 25 years. The assessment combined the results of several subtests in curricular areas to provide an overall view of Student's academic performance in comparison to similarly aged peers. Hadjis assessed Student in the composite areas of reading, math, reading fluency, written language, and comprehension. Student's overall academic achievement fell in the average range, but she exhibited discrepancies in all areas.

Student scored in the below average range in letter and word recognition. She scored in the average range in reading comprehension. Student demonstrated an average ability in understanding the ideas in simple passages, identifying supporting details, and making logical predictions.

On the math computation subtest, Student scored in the average range in performing a variety of calculations based on her age level expectancy. Student scored in the below average range on the subtests measuring quantitative reasoning, mathematical knowledge, and achievement.

In written expression, Student's score fell within the average range in English usage and grammatical awareness. Student scored in the below average range in spelling. Student scored in the average range on the listening comprehension subtest, which measured her ability to listen and remember. Student scored in the below average range on the reading fluency composite, which measured her ability to quickly read and comprehend simple sentences. The Kaufman Test of Educational Achievement was nondiscriminatory, and the scores were accurate and properly interpreted.

BONITA UNIFIED CONSIDERED STUDENT'S SCORES ON CLASSROOM BASED READING AND MATH MEASURES

Student argues Bonita Unified did not accurately document Student's performance on informal reading and math measures. Specifically, Student asserts Hadjis failed to review all of Student's STAR test scores, including scores on tests taken on September 30, and November 14, 2022. Student asserts Bonita Unified did not appropriately consider Student's decline in scores on the September 30, and November 14, 2022 tests compared to her August 24, 2022 score. Student scored at a third-grade, six-month level on a September 30, 2022 STAR test and at a third-grade, five-month level on a November 14, 2022 test. Student further argues Bonita Unified did not consider Student's scores on California annual standardized tests, called the California Assessment of Student Performance and Progress, which showed Student was not performing at grade level for the 2021-2022 school year. Student argues Bonita Unified did not fully understand Student's struggles with reading, writing, and mathematics, and further its failure to consider Student's performance on these measures rendered the October 2022 psychoeducational assessment legally noncompliant.

Student was unconvincing in arguing the October 2022 psychoeducational evaluation was inappropriate because Bonita Unified failed to consider classroom-based reading and math scores. Bonita Unified established it used a variety of assessment tools and strategies to gather relevant academic information about Student. (34 C.F.R. § 300.304(b)(1).) Bonita Unified did not use any single measure as the criterion for determining whether Student remained eligible for special education and for developing an appropriate educational program. (34 C.F.R. § 300.304(b)(2).) At the time of the October 2022 evaluation, Student had not taken the California Assessment of Student

Performance and Progress for the 2022-2023 school year. Hadjis persuasively opined the comprehensive data generated by the Kaufman Test of Educational Achievement provided current insight into Student's academic strengths and weaknesses.

Hadjis reviewed and considered Student's performance on informal measures that assessed her reading and math skills. Student's most recent STAR reading assessment, conducted on August 24, 2022, reported Student scored with a grade level equivalency of fourth grade, two months for an average fourth grader. Student's STAR math score on August 23, 2022, placed Student at fourth grade, seven months for an average fourth grader.

DIBELS was another informal testing measure Hadjis reviewed and considered as part of the psychoeducational evaluation that identified a student's reading fluency and comprehension. DIBELS was administered three times each year. Student's most recent DIBELS assessment score at the time of the October 11, 2022, evaluation reflected Student's overall reading ability was at grade level.

At hearing, Hadjis testified she inadvertently failed to include one of Student's STAR reading scores in her October 11, 2022 psychoeducational report. Specifically, Hadjis did not report Student's score on a September 30, 2022 STAR test where Student scored at a third-grade, sixth month level. Student also argued Hadjis failed to consider her score on a November 14, 2022 STAR test. However, because the November 14, 2022 STAR test happened after the October 2022 assessment at issue, Bonita Unified could not have considered it as part of that assessment. (*Adams, supra*, 195 F.3d 1141, 1149, citing *Furhmann v. East Hanover Bd. of Education* (3d Cir. 1993) 993 F.2d 1031, 1041 [actions of a school district must take into account what was or was not objectively reasonable when the snapshot was taken].)

Hadjis persuasively opined Student's scores on STAR tests was one measure of Student's reading ability, and the Kaufman Test of Educational Achievement, a standardized assessment, provided more detailed information about Student's strengths and weaknesses in reading. Further, no witness disputed Student had deficits in reading and writing, as manifested on informal and formal testing measures. Hadjis was convincing when she opined consideration of the one missing STAR test score would not have changed the tests she administered or the results and recommendations included in her October 11, 2022 psychoeducational report.

Notably, at hearing, Student did not question the validity of the Kaufman Test of Educational Achievement. Student did not offer evidence it was improperly administered, scored, or interpreted. No expert challenged the adequacy of the assessment or opined additional assessments were required to evaluate Student's academic abilities.

Bonita Unified's witnesses, including Hadjis and general education teachers Leahy, Shendrick, and Lawless, offered persuasive and consistent testimony about Student's academic strengths and weaknesses at the time of the October 2022 assessment. Further, their testimony corroborated the objective reasonableness of Bonita Unified's academic assessment. (*Adams, supra*, 195 F.3d 1141, 1149 [after-acquired evidence "may shed light" on the objective reasonableness of a school district's actions].)

General education teacher Leahy held a bachelor's degree in psychology and social behavior and a master's degree in education. She held a multiple subject teaching credential. She taught at Bonita Unified as a fifth-grade teacher since 2017. At hearing, Leahy candidly answered questions and demonstrated excellent recall. She gave specific examples about her lessons with Student, Student's strengths and

weaknesses in reading and math, and Student's social and emotional growth. Leahy's testimony was given significant weight based upon her qualifications and experience, forthright testimony, and knowledge about Student.

Student participated in Leahy's fifth grade class in all subjects during fall 2022, except for 30 minutes daily specialized academic instruction with a special education teacher and 120 minutes weekly speech and language services. Student also participated in general education math and reading intervention with general education teachers Shendrick and Lawless.

Shendrick was Student's general education math teacher. Shendrick held a multiple-subject teaching credential. She explained that students in fifth-grade general education were divided into math groups based upon ability levels. Student was in a lower leveled math group, which meant concepts were taught at a slower pace. The math curriculum was based on a general education fifth-grade level. Shendrick did not have concerns about Student's general math abilities. Student was on task, understood the concepts, and kept up with the class. Shendrick regularly checked for Student's understanding. Student struggled with word problems, and Shendrick sometimes re-taught the steps. Shendrick did not have concerns at the time of the October 2022 assessment about Student's ability to understand and complete problems in fifth grade level math.

Shendrick did not attend Student's IEP team meetings. Parent requested at a December 7, 2022, IEP team meeting that Shendrick provide feedback to Parent about Student's progress in math. Parent genuinely believed Student struggled in math, particularly in completing word problems. Bonita Unified issued a prior written notice

on December 19, 2022, which included, among other things, written input from Shendrick. Shendrick reported Student recently completed a chapter math test and completed nine-word problems with 100 percent accuracy. Student asked Shendrick one question about how to conduct the next step in the problem. Shendrick responded, "What do you think you should do?" Student responded with the correct answer. Shendrick reported Student was doing well in class. She answered questions, completed her work, and self-advocated. This after-acquired information corroborated Student's ability to understand and complete fifth grade level math at the time of the October 2022 psychoeducational evaluation.

Student called general education teacher Denae Mckibben to offer rebuttal testimony to Shendrick's testimony about Student's math abilities. Mckibben provided general education math intervention instruction to Student in March 2023. At hearing, she explained she was asked to work with Student to catch up on several missed math classes. Mckibben's work with Student was five months after the 60-day assessment period. As a result, her testimony was not relevant to the appropriateness of the October 2022 psychoeducational assessment.

Lawless was a credentialed general education teacher. She assessed all fifth-grade students, including Student, at the start of the 2022-2023 school year to determine their reading fluency and identify students who required reading intervention. Lawless explained Student did not require general education reading intervention services based on her individual reading assessment and STAR reading scores. However, Lawless began providing one-on-one reading services with Student on September 29, 2022, at the assistant principal's request. Lawless worked with Student three times weekly for 30-minute sessions. Lawless typically assisted Student during

science class by reviewing text and helping Student find information. She also assisted Student in organizing her thoughts for written assignments. Lawless's testimony corroborated the appropriateness of the October 2022 academic assessment.

Lawless attended the December 7, 2022, IEP team meeting to discuss her reading intervention work with Student. Student's attorney questioned Student's progress on the STAR reading assessments. Lawless reported Student exceeded benchmark for reading and reading fluency. She scored at grade level for reading comprehension on the most recent STAR assessment.

Student relied on Parent's observations in the home setting. At hearing, Parent shared many concerns about Student, including her anxiety about attending school, difficulty completing homework without adult assistance, and struggles with reading and math. Parent demonstrated sincere concern about Student's ability to make progress academically and socially. However, Bonita Unified's witnesses were more persuasive than Parent in establishing the academic assessment was appropriate.

PRIVATE TUTOR ELISA EDGAR'S DECEMBER 5, 2022, PROGRESS REPORT

Bonita Unified's failure to consider Elisa Edgar's December 5, 2022, progress report did not render the October 11, 2022 psychoeducational assessment deficient. Parent requested in an August 18, 2022, email to Hadjis that Bonita Unified review outside reports from Student's private tutor, Elisa Edgar. Edgar prepared a progress report dated December 5, 2022, eight weeks after Bonita Unified completed the psychoeducational assessment.

Edgar worked as a high school education specialist for another school district. Edgar knew Student because she provided 70 hours of private tutoring services to Student over the prior two-year period. Edgar prepared a tutoring progress report for Parent dated December 5, 2022, which was outside the 60-day assessment period.

At hearing, Edgar offered many unsupported opinions about Student. She believed Student struggled with phonics and had difficulty saying multisyllabic words. She offered opinions about Student's grade level reading ability but did not administer any academic assessments. She opined Student read at a fourth-grade level. When asked on cross-examination how she determined Student's reading level, she stated it was based on Student's Lexile system scores. The Lexile system measures a child's reading ability and the difficulty of a text. When questioned further about which Lexile scores she relied on, Edgar changed her answer and testified she based her opinion on an independent report she reviewed. She did not specify the author, type, or date of the report.

Edgar opined Student could only sit for 15 minutes at a time but had never observed her in the classroom. Edgar was not a credentialed occupational therapist, speech and language pathologist, or school psychologist, and therefore, her opinions at hearing about Student's needs in these areas were unpersuasive. Her overall testimony lacked credibility because her December 5, 2022 progress report referenced an outdated May 20, 2019 IEP as being Student's current IEP. Further, she was not familiar with Student's current educational program or her goals, nor did she work with Student on her goals. Edgar's multiple inconsistencies, and opinions outside her area of expertise or without proper foundation negatively affected her overall credibility. Therefore, her testimony was given little weight on any issue.

BONITA UNIFIED'S INTELLECTUAL DEVELOPMENT ASSESSMENT WAS
APPROPRIATE

Hadjis selected an array of cognitive testing to compare Student's learning ability to similarly aged peers. Hadjis administered the Kaufman Brief Intelligence Test, Second Edition, an individually administered brief measure of Student's verbal and nonverbal intelligence. Hadjis administered this test approximately 80 times annually, and more than 500 times over her career.

Student's overall score was in the average range. Student scored in the average range in verbal intelligence. The verbal ability composite had two subtests: verbal knowledge and riddles. The verbal knowledge subtest measured Student's general knowledge and receptive vocabulary. The riddles subtest measured knowledge of specific facts and required Student to use reasoning ability, integration, and logical classification skills.

Student scored in the above average range on the nonverbal intelligence composite. Hadjis administered the matrices subtest, which assessed Student's non-verbal ability using analogies and traditional matrix patterns. Student's above average score on this subtest reflected Student's non-verbal intelligence was an area of relative strength. At hearing, Hadjis opined Student's verbal and non-verbal scores were consistent with Bonita Unified's last three-year review conducted in 2020.

The evidence established that Bonita Unified's intellectual development test was appropriate. The Kaufman Brief Intelligence Test was used for the purposes for it was valid and reliable. It was administered by trained personnel in conformance with the instructions provided by the producer of such test. (20 U.S.C. § 1414(b)(3)(A)(iii)-(v); 34 C.F.R. § 300.304(c)(1)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) The assessment was

selected and administered so as not to be racially, culturally, or sexually discriminatory, and administered in Student's primary language. (20 U.S.C. § 1414(a)(3)(A)(i), (ii); 34 C.F.R. § 300.304(c)(1)(i), (ii); Ed. Code, § 56320, subd. (a).) No evidence was offered challenging the appropriateness or accuracy of Bonita Unified's intellectual development assessment.

PHONOLOGICAL PROCESSING SKILLS ASSESSMENT WAS APPROPRIATE

Phonological processing is included in the description of basic phonological processes. (Ed. Code, § 56334; 20 U.S.C. § 1401(30)(A).) Phonological processing referred to the use of phonological information, especially the sound structure of oral language, in processing written and oral language commonly used for academics and everyday activities. At hearing, Hadjis opined a deficit in one or more of the basic phonological processes can negatively affect a student's academic achievement, particularly in reading.

A specific learning disability is a disorder in one or more of the basic psychological processing involved in understanding or using language. (34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5. § 3030(b)(10).) The specific learning disability category includes "such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia." (20 U.S.C. § 1401(30)(B).) An auditory processing disorder is not a stand-alone category for eligibility for special education services. However, students with auditory processing disorders may be eligible under an existing category if the auditory disorder adversely effects educational performance.

At hearing, Hadjis opined she suspected Student might continue to be eligible for special education under the category of specific learning disability based on a

discrepancy between Student's intelligence and academic performance. Hadjis also believed it was important to evaluate Student's basic psychological processes in attention, auditory, and phonological processing. Hadjis convincingly opined she based her determination to reassess Student in these areas based, in part, on a review of Student's prior educational records, including Bonita Unified's 2020 three-year psychoeducational reevaluation which determined Student had deficits in phonological processing. She also based this decision on her review of Dr. Braun's report and concerns expressed by Parent.

Hadjis selected additional assessment tools to measure Student's basic psychological processing in the areas of phonological awareness, phonological memory and rapid naming. Hadjis administered the Comprehensive Test of Phonological Processing, Second Edition, called the Phonological Processing Assessment, a comprehensive, standardized measure for auditory and phonological processing. Hadjis administered the Phonological Processing Assessment more than 100 times over her career and was qualified to administer this assessment.

The Phonological Processing Assessment measured three components of phonological processing:

1. phonological awareness;
2. phonological memory; and
3. rapid naming.

Phonological awareness was the ability to recognize individual sounds in words. Deficits in phonological awareness were highly correlated with reading difficulties. The phonological awareness composite measured the ability to mentally manipulate sounds

in words. The phonological awareness composite was comprised of three subtests. On the elision subtest, Student was required to manipulate word parts to create a new word. Student scored in the below average range. On the blending words subtest, Student was given word sounds and asked to put them together to make a word. Student scored in the poor range on this subtest. On the phoneme isolation subtest, Student was required to remove a specific phoneme from a word. Student scored in the above average range. Student's overall score in the area of phonological awareness was in the average range.

Phonological memory referred to the ability to hold speech-based information in short-term memory. Student scored in the very poor range on the phonological memory composite. In the memory of digits subtest, which required Student to hear and repeat a set of numbers, Student scored in the poor range. On the nonword repetition subtest, which required Student to hear and repeat a nonword, Student scored in the poor range. At hearing, Hadjis opined that deficits in phonological memory may require a student to have instructions repeated and multi-step directions broken down. Deficits in phonological memory may also cause a student frustration when asked to repeat words. She persuasively explained that repetition of instructions, visual support, such as sentence starters, vocabulary words, and posting rules, helps move information from short to long term memory.

The rapid automatic naming composite measured long-term retrieval, which was the process of transferring information from short-term to long-term memory. Hadjis explained the rapid automatic naming composite offered relevant information about Student's reading ability. This composite required Student to read a series of letters and numbers as quickly and accurately as possible. Student's performance fell in the average range.

Hadjis determined Student demonstrated deficits in the basic psychological processes of attention, auditory processing, and phonological processing. Student demonstrated a discrepancy between her measured intelligence and academic performance in the area of reading fluency based upon scores on the Kaufman Brief Intelligence Test. Hadjis explained that Student's processing deficits may interfere with Student's ability to adequately process information and contribute to Student's reading difficulties. Hadjis compared Student's phonological processing abilities to Bonita Unified's three-year psychoeducational assessment conducted in 2020. She noted Student scores on the October 2022 Phonological Processing Assessment were consistent with Student's scores on the 2020 three-year reassessment in phonological awareness, phonological memory, and rapid symbolic naming.

STUDENT'S ARGUMENTS CHALLENGING THE APPROPRIATENESS OF BONITA UNIFIED'S PHONOLOGICAL PROCESSING ASSESSMENT WERE UNPERSUASIVE

Student did not offer persuasive testimony challenging the adequacy of Bonita Unified's phonological processing. At hearing, Dr. Braun testified on Student's behalf. However, she offered no testimony impugning Bonita Unified's assessors or the appropriateness of the psychoeducational assessment.

Dr. Braun held a doctorate in audiology. She was a Fellow with the American Academy of Audiology and held California credentials in speech and language pathology and audiology. She had extensive experience as an educational audiologist. At hearing, she explained that an audiologist's evaluation for a central auditory processing disorder looks at a brain's ability to decipher noises and sounds, take the signals, and interpret them. She explained auditory processing weaknesses often contribute to poor academic

performance because a student's listening comprehension and ability to follow instructions may be impaired. The CAPDOTS program generally improves a student's ability to follow multistep directions and listening attention, especially when there is background noise.

Dr. Braun was an experienced educational audiologist. Contrary to Student's argument in her closing brief, Dr. Braun offered no opinions at hearing about additional testing she believed should have been conducted by Bonita Unified during the October 2022 evaluation process. She expressly declined to offer criticism about Bonita Unified's phonological processing testing because it was outside her area of expertise. She conceded she was not qualified to diagnosis Student with a phonological disorder, which was within the purview of a school psychologist. Dr. Braun was not a school psychologist, had not observed Student in the school setting, or spoken to her teachers. Dr. Braun did not opine the assessments administered by Bonita Unified failed to satisfy the requirements of the IDEA or otherwise failed to assess Student's auditory processing needs. Although Dr. Braun was generally more familiar with the Test of Auditory Processing Skills, Third Edition, she had no criticism of the Phonological Processing Assessment administered by Bonita Unified. Bonita Unified had the discretion to determine which assessments to administer and was not required to administer every test available. (*E.M. ex rel. E.M. v. Pajaro Valley Unified School Dist.* (9th Cir. 2011) 652 F.3d 999, 1003.)

In her closing brief, Student argued Bonita Unified did not evaluate Student's auditory and phonological processing needs as part of its October 2022 assessment. This was contrary to the overwhelming weight of the evidence. Bonita Unified established it assessed Student's auditory and phonological processing needs through the Phonological Processing Assessment, which generated sufficient and necessary

information for an IEP team to develop an appropriate educational program for Student. No evidence was presented that a specific test that only an audiologist could perform would have provided any better guidance or information for an IEP team. (*Park, supra*, at pp. 1030-1032 [where district's special education consultant performed vision tests and concluded that student's vision was not hindering his education, there was no procedural violation in not assessing for double vision and optic nerve damages despite parents' suspicion of disability in these areas].) The preponderance of evidence proved Bonita Unified's phonological testing was adequate.

Student also unpersuasively argued Bonita Unified should have formally evaluated her for dyslexia instead of evaluating her for skills and weaknesses with reading, writing, and spelling under the broader specific learning disability category. This issue was not raised in Student's pleading and was not at issue in the hearing. Further, a similar argument was recently rejected by the Ninth Circuit Court of Appeals in *Crofts v. Issaquah School District No. 411* (9th Cir. 2022) 22 F.4th 1048). The Ninth Circuit rejected a student's argument a school district should have specifically assessed student for dyslexia where it conducted a battery of assessments to evaluate the student's reading and writing skills; areas that dyslexia impacts. (*Id.* at p. 1055-1056.) The court found the school district's evaluation was not deficient "merely because it did not use the term 'dyslexia' in the manner [student] would have preferred." (*Ibid.*) Similarly, here the appropriate inquiry was not whether Bonita Unified specifically assessed Student for dyslexia, but whether it adequately assessed Student's skills and weaknesses in reading and writing.

The weight of the evidence proved Bonita Unified conducted appropriate phonological testing. Student offered no persuasive evidence, including evidence by any expert, suggesting Bonita Unified's phonological testing was inappropriate, or

inadequate to obtain the information necessary to properly evaluate Student's phonological skills and weaknesses. Bonita Unified's phonological processing assessment generated sufficient information about Student's phonological processing deficits for the IEP team to consider in developing Student's educational program, including any needs in auditory processing.

DR. BRAUN DID NOT CONDUCT AN UPDATED AUDITORY PROCESSING EVALUATION

Student contends Bonita Unified was obligated to contact Dr. Braun to obtain an update on Student's progress on her private CAPDOTS auditory processing treatment program. Student further contends Bonita Unified should have considered a December 15, 2022, email from Dr. Braun concerning Student's progress on the CAPDOTS program.

Bonita Unified contends it was aware of Student's diagnosis of central auditory processing disorder and considered Dr. Braun's report as part of the October 2022 evaluation. Bonita Unified contends Student did not provide Bonita Unified with an updated independent evaluation. Bonita Unified further contends it had no obligation to contact Dr. Braun to obtain an update on Student's progress on the CAPDOTS program.

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. (34 C.F.R. § 300.501(b); Ed. Code, § 56500.4.) In performing a reassessment, an IEP team and other qualified professionals must review existing assessment data on the child, including evaluations and information provided by the child's parents. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R.

§ 300.305(a)(1); Ed. Code, § 56381, subd. (b)(1).) A local educational agency must consider an independent educational evaluation that a parent obtains and gives to the agency in any decision made with respect to the provision of FAPE to the child, so long as the evaluation meets agency criteria. (34 C.F.R. § 300.502(c); Ed. Code, § 56329, subd. (c).)

The evidence did not establish Dr. Braun conducted an updated independent evaluation at the time of the October 2022 psychoeducational assessment which was provided to Bonita Unified and which it should have considered. At hearing, Dr. Braun confirmed she had not conducted an updated central auditory processing evaluation for Student at the time of the October 2022 psychoeducational assessment because Student had completed only a portion of the CAPDOTS program. She explained Student needed to complete the CAPDOTS program before a new evaluation would be useful, indirectly undermining Student's assertions. Parent contacted Dr. Braun sometime in January 2023, after the October 11, 2022 evaluation, about completing the CAPDOTS program. Parent did not request a reevaluation at that time.

Parent corroborated Dr. Braun's testimony. Parent confirmed Student had not completed the CAPDOTS program due to time constraints. Parent told the October 17, 2022, IEP team Student had only completed 40 percent of the CAPDOTS program Student started in March 2022, and Dr. Braun would conduct a reevaluation after Student finished the program. Therefore, the evidence established Dr. Braun had not conducted an independent evaluation at the time of the October 2022 assessment, or the October 17, 2022 IEP team meeting, which would have triggered Bonita Unified's obligation to consider such report as part of Bonita's October 2022 psychoeducational evaluation. (34 C.F.R. § 300.502(c); Ed. Code, § 56329, subd. (c).)

Student unconvincingly argued Bonita was obligated to contact Dr. Braun to obtain a status on Student's CAPDOTS treatment. Student cited no legal authority in support of this argument. Student also did not establish Parent gave Bonita Unified assessment data about Student from Dr. Braun, including evaluations or other information, during the October 2022 assessment period. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1); Ed. Code, § 56381, subd. (b)(1).) Student argued in her closing brief Bonita Unified should have sent her a release of information to allow Dr. Braun to share Student's information. However, this directly contradicted the weight of the evidence at hearing. At Parent's request, Iavicoli sent Parent a medical release after the October 17, 2022, IEP team meeting, but Parent did not return the signed form. Parent conceded at hearing she received the form, and unconvincingly testified she placed the form in Student's backpack.

In her closing brief, Student also argued Bonita Unified failed to consider a December 15, 2022, email sent from Dr. Braun to Bonita Unified nine weeks after Bonita Unified's October 11, 2022, psychoeducational evaluation. This email was after completion of the October 2022 evaluation and therefore it was not available at the time the assessment was conducted. (*Adams, supra*, 195 F.3d 1141, 1149.) Therefore, Bonita Unified did not have an obligation to consider a December 15, 2022 email from Dr. Braun. Even if Bonita Unified had such an obligation, the evidence did not prove the failure to do so invalidated Bonita Unified's October 2022 psychoeducational evaluation. (20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); Ed. Code, § 56505, subd. (f)(2); *Target Range, supra*, 960 F.2d 1479, 1484; *D.O. By & Through Walker v. Escondido Union Sch. Dist.* (9th Cir. 2023) 59 F.4th 394, 416 [finding school district's delayed autism

assessment did not deny a FAPE where the student's "special education placement stayed unchanged after the assessment" and there was "no evidence if the assessment had been conducted earlier, an alternative placement would have been 'better considered.'"].)

VISUAL AND VISUAL-MOTOR PROCESSING

Visual and visual-motor processing referred to what the brain does with the information one sees. Visual processing referred to the coordination of visual input with motor output. This area of functioning is important in academic activity requiring written work.

A child must be tested in all areas of suspected disability. (*N.B. v. Hellgate Elementary Sch Dist., ex rel. Bd. of Directors, Missoula Cnty., Mont.* (9th Cir. 2008) 541 F.3d 1202, 1208 (*N.B.*) [the requirement to assess may be triggered by the informed suspicions of outside experts].) A disability is "suspected" and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. (*Pasatiempo by Pasatiempo v. Aizawa* (9th Cir. 1996) 103 F.3d 796, 802.) The "informed suspicions of parents, who may have consulted outside experts," trigger the requirement to assess, even if the school district disagrees with the parent's suspicions. (*Ibid.*; see also *Timothy O. v. Paso Robles Unified Sch. Dist.* (9th Cir. 2016) 822 F.3d 1105, 1120. [district had notice of the child's autistic symptoms when it received report diagnosing student with autism].)

Bonita Unified proved it adequately considered Student's visual and visual-motor processing needs. In considering Student's visual processing needs, Hadjis reviewed Student's scores on the visual and visual-motor processing assessments conducted by Bonita Unified in its October 2020 three-year reevaluation. Student's performance on

all assessments was in the above average range. Hadjis also considered Dr. Ballinger's report. Hadjis included Dr. Ballinger's findings in her report, specifically referencing Student's deficits in

- saccadic eye movement,
- focusing flexibility,
- binocular stability, called eye teaming,
- visual discrimination, and
- visual recall.

Hadjis determined additional testing in visual and visual-motor processing was not necessary. (20 U.S.C. § 1414(c)(4); 34 C.F.R. § 300.305(d); *Z.B., supra*, 888 F.3d 515, 523).)

The Prior OAH Decision determined Dr. Ballinger's report did not make recommendations which significantly changed the goals and services offered in the May 22, 2020 IEP. As stated in the Prior OAH Decision, "while Dr. Ballinger passionately advocated for visual therapy intervention, she based the need for vision therapy on assumptions rather than data regarding Student's actual academic performance in the classroom. No doubt the recommended vision therapy would provide increased skills for academic excellence, but Bonita Unified was not required to maximize Student's benefit or academic progress." (*Bonita Unified School District v. Student* (2021) OAH Case No. 2021040572/2021030295, *p. 45.)

The preponderance of the evidence established Bonita Unified's October 11, 2022 psychoeducational evaluation generated sufficient information about Student's skills and weaknesses for an IEP team to develop Student's educational program. Although Parent had concerns Student had visual processing deficits that impacted her ability to impact her education, this was not an area of suspected need at the time of the

October 11, 2022 psychoeducational evaluation. No expert, including Dr. Ballinger, offered any evidence to the contrary, except for reiterating the same arguments made and rejected in the Prior OAH Decision.

BONITA UNIFIED WAS NOT REQUIRED TO CONTACT DR. BALLINGER OR
CONSIDER HER DECEMBER 6, 2022 PROGRESS REPORT

Student's most recent April 7, 2022 IEP did not determine Student required visual processing therapy to obtain educational benefit. The Prior OAH Decision held Dr. Ballinger's recommended vision therapy was not required for Student to access her educational program at the time of Student's May 22, 2020 three-year IEP. At hearing, Student did not offer evidence Student's visual processing needs changed or declined such that there was a "strong likelihood" that alternative educational possibilities for Student "would have been better considered" had it contacted Dr. Ballinger or considered her December 6, 2022, progress report. (*Timothy O., supra*, 822 F.3d 1105,1123.)

Dr. Ballinger was a licensed optometrist in private practice and certified as a non-public agency for 30 years, with over 43 years-experience in vision therapy and vision development. Dr. Ballinger conducted a series of tests in fall 2020 spanning saccadic eye movement speed, focusing flexibility, and visual acuities. Dr. Ballinger's recommendations in her December 2020 report for optometric vision therapy sessions was previously rejected by Bonita Unified in the development of Student's IEP annual May 2020 IEP. The Prior OAH Decision upheld this decision.

At hearing, Dr. Ballinger opined that at the time of her 2020 assessment Student demonstrated a variety of visual processing deficits, including convergence insufficiency, which affected how Student's eyes worked together when looking at nearby objects. This can cause blurry or double vision. Dr. Ballinger also opined convergence insufficiency can cause visual fatigue over the course of a school day. She also believed Student had deficits in visual scanning, accuracy, and speed. Dr. Ballinger opined these deficits could cause a child to skip words and sentences, which could lead to difficulty in understanding concepts. Dr. Ballinger's testimony was confusing and hard to follow. She often used technical terms but did not explain or clarify their meaning. This negatively affected the persuasiveness of her testimony.

As part of her private vision therapy service, Dr. Ballinger produced a progress report dated December 6, 2022. The December 6, 2022 progress report was prepared eight weeks after the October 11, 2022 psychoeducational evaluation. Neither Dr. Ballinger, Parent nor any Bonita Unified witness offered testimony about how the progress report was relevant to Student's visual processing needs. Student also did not prove the progress report was an independent educational evaluation provided to Bonita Unified by Parent, which would have triggered Bonita Unified's obligation to consider the report. (34 C.F.R. § 300.502(c) (2006); Ed. Code, § 56329, subd. (c).)

Dr. Ballinger reviewed and commented on Bonita Unified's October 11, 2022 psychoeducational report during the hearing. Dr. Ballinger made various criticisms about the report in areas outside her knowledge or area of expertise. For example, she opined it was difficult to "pick apart the report", but she questioned the discrepancies between various subtests on the academic assessment. She testified she could not understand why the school "could not figure out" the reason for Student's reading

deficits. Dr. Ballinger was not a credentialed school psychologist and was not qualified to administer the Kaufman Test of Educational Achievement or the Phonological Processing Assessment. She did not hold a teaching credential. Other than attending the January 5, 2021, IEP team meeting, Dr. Ballinger did not speak to any of Student's teachers or educational providers. She defensively testified she could not observe Student at school because her evaluation took place during the COVID-19 pandemic in fall 2020. She offered no explanation why she did not observe Student at school in fall 2022 before she wrote her December 6, 2022 progress report. Her testimony further demonstrated a lack of understanding about Student's educational program and Student's needs in the classroom setting.

Dr. Ballinger testified as an advocate for Student's position, rather than an impartial or independent evaluator. Further, Dr. Ballinger offered no specific or persuasive opinions challenging the adequacy of Bonita Unified's psychoeducational assessment and made no recommendations about additional visual processing testing Bonita Unified should have conducted at the time of the October 2022 psychoeducational evaluation. In her closing brief, Student suggested Dr. Ballinger made recommendations about additional visual processing testing that should have been conducted. This directly contradicted the evidence.

Bonita Unified's witnesses, including Leahy, Shendrick, Castro, and Lawless, provided more persuasive testimony about Student's functioning in the educational setting. Each witness persuasively described Student's ability to work independently and follow directions. Student asked questions when she needed clarification. Student sometimes needed prompting to complete her work, but with redirection she focused and completed her assigned tasks. Student sat at the front of the class near the instructor, paid attention, and followed instructions. Further, no evidence showed

what area of need was unaddressed, or what additional information would have better informed Student's IEP team about Student's needs in visual processing. The weight of the evidence failed to prove the failure to contact Dr. Ballinger or consider her December 6, 2022 progress report invalidated the October 11, 2022 psychoeducational assessment.

BONITA UNIFIED'S SOCIAL EMOTIONAL, BEHAVIOR ASSESSMENT, AND ATTENTION PROCESSING ASSESSMENT WAS APPROPRIATE

Hadjis selected the Behavior Assessment Scale for Children, Third Edition, called Behavior Assessment, to assess Student's social, emotional, attention, and behavioral needs during the October 2022 psychoeducational evaluation. This was a norm-referenced rating scale and observations of Student's behaviors, emotions, self-perceptions, and history through an evaluation of Student by Parent and general education teacher Leahy.

On the Behavior Assessment, Parent scored Student at risk in a variety of categories, including externalizing problems, and disruptive, impulsive, and uncontrolled behaviors. Parent reported Student was generally alone and had difficulty making friends or joining group activities. Parent also reported Student within the clinically significant range in many areas, including

- internalizing problems,
- anxiety,
- depression,
- somatization, referred to as the physical expression of stress and emotions,
- atypicality,

- withdrawal,
- attention, and
- adaptability.

Parent reported Student engaged in strange or odd behaviors, generally seemed disconnected from her surroundings, and had difficulty making friends and maintaining attention. Parent reported Student frequently displayed behaviors from worry or fear, was withdrawn and sad, and had a high number of health-related concerns.

Scale scores in the clinically significant range suggested a high level of maladjustment. However, Parent's rating of Student produced a F Index score that fell in the caution range. The F Index was a diagnostic performed as part of the scoring of a responding person's answers used to analyze the accuracy, reliability, and credibility of the respondent's answers. An F Index indicated a negative overall view of Student's behavior. At hearing, Hadjis opined that an F Index score meant caution should be used when interpreting Parent's scores. She explained the F Index is designed to assess the possibility a rater has depicted a child's behavior in an inordinately negative fashion. Hadjis explained sometimes an F Index score reflected a parent's frustration with their child's behaviors. Hadjis contacted Parent on two occasions during the 2022 assessment to discuss Parent's responses that informed the F Index. Parent reported Student often was nervous about things she could not control.

Leahy's scores on Student in the classroom setting were different than what Parent observed at home. According to Leahy, Student exhibited typical classroom behavior and self-control similar to her peers, did not tend to act aggressively, and did not demonstrate rule breaking behaviors. Student did not display anxiety-based or depressive behaviors more often than her peers. Student maintained an attention level

similar to her peers and did not have unusual difficulty comprehending or completing schoolwork. Student did not avoid social situations and could develop and maintain friendships. In the area of functional communication, Leahy reported Student had adequate expressive and receptive skills and could seek out and find necessary information. Leahy described Student as extremely well behaved in class. She participated in all class activities.

The Behavior Assessment included an adaptive skills composite. Parent scored Student in the clinically significant range in adaptive skills. She reported Student had extreme difficulty adapting to changing situations. Parent scored Student at risk in leadership skills, daily living, and functional communication. In contrast, Leahy reported Student

- adapted well to a variety of situations,
- possessed sufficient social skills,
- demonstrated a typical level of creativity and ability to work under pressure, and the ability to organize and complete her homework compared to her peers.

Attention processing was the process of sustaining attention in the educational environment. Parent scored Student at risk in hyperactivity, and in the clinically significant range in attention problems. Leahy scored Student in the average range in hyperactivity and attention.

Hadjis concluded Parent had significant behavioral concerns about Student in the home setting. Rating scales, along with reports by teachers, showed Student demonstrated appropriate behavioral, social, attention, and emotional functioning in the classroom. Leahy reported Student had a small group of friends and needed time to

“warm-up” to people. Student participated in class and helped her teacher. She shared facts about herself to her teacher and peers. Overall, there was no indication that social emotional, behavior, or attention problems interfered with Student’s learning.

At hearing, Student did not specifically question the appropriateness of the Behavior Assessment, how it was administered, or the accuracy of the results. However, Student argued she received weekly counseling during the 2022-2023 school year with mental health counselor Elisa Martinez Saldana, but Bonita Unified failed to adequately consider Student’s social and emotional needs in conducting the October 2022 psychoeducational evaluation.

Saldana held a master’s degree in social work and a pupil personnel services credential in school social welfare. She worked as a mental health counselor at Bonita Unified since 2013. She provided Student 30 minutes weekly individual school counseling services during the 2022-2023 school year. She worked with Student on her social emotional goal of identifying and coping with anxiety triggering situations. At the beginning of the school year, Student shared with Saldana she was nervous about being called on during class. Saldana developed a strong rapport with Student and Student opened up to her. Student answered Saldana’s questions with both short and long answers.

Saldana attended the October 17, 2022, IEP team meeting to provide an update on Student’s progress towards her social emotional IEP goal. Saldana reported Student had met her social emotional goal, a fact Parent and her attorney did not dispute. Saldana shared strategies she used with Student to cope with anxiety provoking situations. Student participated in Girl Scouts and felt more comfortable in class. She reported Student had many friends.

At hearing, Student did not offer persuasive evidence challenging the adequacy of Bonita Unified's social emotional, behavior, and attention processing assessments. Bonita Unified proved it appropriately assessed Student in these areas and generated sufficient information for the IEP team to consider.

BONITA ASSESSED STUDENT IN ALL AREAS OF SUSPECTED DISABILITY PURSUANT TO THE JUNE 30, 2022, AND AUGUST 8, 2022, ASSESSMENT PLANS

Student contends Bonita Unified failed to evaluate Student in all areas of suspected disability, specifically in phonological processing, dyslexia, attention deficit hyperactivity disorder, and anxiety. However, as discussed in this Decision, Bonita Unified assessed Student in each of these areas part of its October 11, 2022 psychoeducational and speech and language evaluations. Student also contends Bonita Unified failed to evaluate whether Student benefited from a push-in or pull-out model for delivery of specialized academic instruction.

Bonita Unified contends its psychoeducational evaluation sufficiently assessed Student in all areas of suspected disability pursuant to the August 8, 2022 assessment plan. Bonita Unified further contends it was not required to assess how Student's specialized academic instruction would be implemented.

The parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purpose of amending or modifying the child's current IEP. (34 C.F.R. § 300.324(a).) Parental consent is required when the parties agree to amend an IEP without holding a meeting. (34 C.F.R. § 300.324(a)(4)(i).)

The IDEA requires each IEP to include a statement of the special education and related services and supplementary aides and services, based on peer-reviewed research to the extent practicable, to be provided to the child to enable the child to advance appropriately to attaining annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children. (34 C.F.R. § 300.320(a)(4).) The IEP must include the projected start date for the services and the anticipated frequency, location, and duration of those services. (34 C.F.R. § 300.320(a)(7).) Screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services. (20 U.S.C. § 1414(a)(1)(E); 34 C.F.R. § 300.302.)

Student failed to meet her burden of proving Bonita Unified should have assessed whether a push-in or pull-out model for delivery of specialized academic instruction was appropriate. Parent met with Hadjis in early September 2022 to discuss Parent's concerns about Student. Student's April 7, 2022 IEP provided Student 150 minutes weekly specialized academic instruction through a pull-out model. Student received 150 minutes weekly specialized academic instruction in a separate setting with a special education teacher. Parent wanted Student to spend more time in the general education classroom. Hadjis and Parent discussed whether Student would benefit from a push-in delivery model, which meant the special education teacher would push-into the regular classroom to deliver specialized academic instruction.

On September 14, 2022, Hadjis proposed Parent sign an IEP amendment changing the service delivery model for specialized academic instruction and an increase of 30 minutes per week of specialized academic instruction. Special education teacher

Castro would work with Student in the general education classroom on Tuesdays and Wednesdays from 12:50 to 1:50 p.m. On Mondays and Fridays, Castro would deliver 30 minutes specialized academic instruction in a separate setting.

Hadjis sent Parent a proposed IEP non meeting amendment on September 14, 2022, reflecting the change in service model. The IEP amendment stated this service change, "will occur for a diagnostic period while the triennial is being conducted to determine which model is appropriate to meet Student's needs." At hearing, Hadjis explained the diagnostic period was meant to mean the time between Parent's consent to the amendment and the IEP team's meeting to discuss Student's educational program. The IEP team would meet on October 17 2022, to review the change. Additionally, Student would continue to participate in general education reading intervention during the "diagnostic period." Parent signed the IEP amendment on September 19, 2022. She handwrote on the amendment she agreed only to the change in service model "for the diagnostic period for IEP on October 17, 2022."

The IEP team initially met on October 17, 2022, to review the psychoeducational evaluation. Parent and her attorney questioned Hadjis about the status of her assessment of the push-in or pull-out model for delivery of specialized academic instruction. Hadji responded she was working with the Castro to discuss the delivery of specialized academic instruction and ultimately this was an IEP team decision. Parent understood Bonita Unified would conduct an assessment to determine which delivery model worked best for Student. Parent's attorney informed the December 7, 2022, IEP team Parent understood Bonita Unified would assess the push-in or pull-out models and prepare a written report. Hadjis responded the method for delivery of services was not part of a special education assessment.

Prior written notice is required to be given by a public agency to parents of a child with a disability upon initial referral for assessment, and a reasonable time before the public agency initiates or changes, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or provision of FAPE to the child. (20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503; Ed. Code, § 56500.4, subd. (a).)

Parent and her attorney informed the December 7, 2022, IEP team they wanted the push-in services discontinued because they did not believe they were appropriate for Student. On December 19, 2022, Bonita Unified issued a prior written notice to Parent. The notice informed Parent Bonita Unified agreed to her request to terminate the push-in services set forth in the September 14, 2022, non-meeting amendment IEP. Bonita Unified agreed to immediately implement Student's specialized academic instruction through a pull-out model pursuant to the April 7, 2022, IEP.

Student failed to meet her burden of proving Bonita Unified was required to conduct an assessment for delivery of specialized academic instruction. First, specialized academic instruction is not an eligibility category, but rather is a special education service. (34 C.F.R. § 300.320(a)(4).) The types, duration, and frequency of services is determined by an IEP team based on the assessments in the areas of suspected disability and input from the IEP team. (34 C.F.R. § 300.320(a)(7).) Second, the method for how a special education service is delivered is analogous to a screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation. This is not considered an evaluation for eligibility for special education and related services. (20 U.S.C. § 1414(a)(1)(E); 34 C.F.R. § 300.302.)

Even if failure to conduct an assessment in this area was a procedural violation under the IDEA, no evidence was offered showing how this significantly impeded Parent's right to participate in the IEP process or denied Student educational benefit. Parent and Student's attorney raised the issue about Bonita Unified's assessment at the October 17, 2022, and December 7, 2022 IEP team meetings. They asked questions and expressed their disagreement to specialized academic instruction being delivered in the regular setting. In response to Parent's request on December 7, 2022, to stop push-in services, Bonita Unified issued a prior written notice in a reasonable time and informed Parent Bonita Unified would immediately return the original delivery model. Parent therefore was not denied meaningful parental participation. Student also did not prove her right to a FAPE was impeded or she was denied educational benefit. No evidence was offered how delivery of specialized academic instruction in the general classroom impeded Student's educational opportunities.

LIMITATION OF ISSUES DECIDED

Student contended for the first-time during hearing and in her closing brief that Bonita Unified failed to assess Student in

- assistive technology,
- occupational therapy, specifically sensory, behavior, and motor issues
- attention deficit hyperactivity disorder, and
- dyslexia.

However, the complaint did not allege, and Student did not raise at the prehearing conference or at the start of hearing, any issue related to Bonita Unified's failure to assess Student in assistive technology, occupational therapy, attention deficit

hyperactivity disorder, and dyslexia. Throughout the hearing, Bonita Unified objected to Student's attempts to expand the scope of the issues. The ALJ sustained Bonita Unified's objections and clarified on the record the issues at the due process hearing were limited to the issues framed at the prehearing conference and at the start of hearing.

Student did not seek leave to amend to add additional issues, and Bonita Unified did not consent at any time to amending the issues for hearing. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i) [the party requesting the hearing may not raise issues at the due process hearing that were not raised in the complaint unless the other party agrees.].) Accordingly, the Decision does not address the issues of whether Bonita Unified failed to assess in assistive technology, occupational therapy, attention deficit hyperactivity disorder, and dyslexia. (See, e.g., *H.B. v. Las Virgenes Unified School Dist.* (9th Cir. 2007) 239 Fed.Appx. 342, 344-345 [nonpub. Opn.].) No issues were added to the hearing at any time, and this Decision decides only those issues agree-upon, as stated in the July 7, 2022 Order Following Prehearing Conference for Hearing by Videoconference.

WRITTEN REPORT

An assessor must produce a written report of each assessment that includes whether the student may need special education and services and the basis for making that determination. (Ed. Code, § 56327, subd. (a), (b).) The report must also include relevant health and development, and medical findings, if any, regarding the student. (Ed. Code, § 56327, subd. (e).) For a student with a learning disability, the report must explain whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services. (Ed. Code, § 56327,

subd. (f).) The report must be given to the parent or guardian after the assessment within 60 days when the IEP team meeting is held to consider the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56302.1, subd. (a), 56329, subd. (a)(3).)

The October 11, 2022, psychoeducational evaluation and report complied with statutory requirements. Hadjis produced a written report of the psychoeducational assessment, which included whether Student required special education and related services. The report included

- detailed information about Student's educational and health history,
- input from Parent,
- Bonita Unified's prior assessments,
- Dr. Braun and Dr. Ballinger's reports, and
- a summary of Student's psychological, educational, and behavioral abilities.

The report included the results from the various informal and standardized tests, and the assessor's behavioral observations, both during testing and in the classroom. The report analyzed whether Student met eligibility for special education and related services under the categories of specific learning disability and other health impairment. (Cal. Code Regs., tit. 5, § 3030, subds. (a) and (b).) The report identified the legal eligibility criteria for each category. (*Id.*) The report also incorporated the speech and language assessment discussed below in Student's Issue 2 and Bonita Unified's Issue 4.

Hadjis explained the basis upon which her determinations were made and noted relevant observations and behaviors. She described the relationship of her assessment findings to Student's academic and behavioral functions, and determined the assessment results were not primarily due to environmental, cultural, or economic factors. Hadjis

concluded Student remained qualified for special education and related services due to a specific learning disability. This was based on a substantial discrepancy between Student's overall intellectual ability and her academic skills, specifically in reading fluency. Student also demonstrated deficits in auditory processing, phonological processing, and attention. Student also met eligibility under the category of other health impairment because of her diagnosis of attention deficit hyperactivity disorder and attention problems. Student exhibited social anxiety in the home setting, and to a lesser extent in the school setting.

Bonita Unified provided a copy of the October 11, 2022 psychoeducational report to Parent on October 14, 2022. Hadjis presented her report to the October 17, 2022 IEP team. (Ed. Code, § 56327, subds. (a), (b).) Hadjis responded to Parent and her attorney's questions about Student's auditory and phonological deficits. Hadjis explained Student's overall score on the Phonological Processing Assessment was average, with the exception of phonological memory. Hadjis explained deficits in phonological memory may contribute to Student's reading difficulties. The IEP team determined Student continued to qualify for special education eligibility under the primary category of specific learning disability and secondary category of other health impairment.

Bonita Unified proved its psychoeducational assessment was sufficiently comprehensive in assessing Student's

- academic achievement,
- health,
- intellectual development,
- social emotional behavior,

- adaptive behavior,
- auditory and phonological processing, and
- attention processing.

Bonita Unified also proved the assessment was tailored to the concerns reported by Parent and Student's teachers. The Behavior Assessment, along with the assessor's observations, provided relevant information about Student's attention, anxiety, and adaptive behavior needs. The Kaufman Brief Intelligence Test offered insight into Student's intellectual development. The Kaufman Test of Educational Achievement provided relevant information about Student's strengths and weaknesses in reading, math, reading fluency, written language, and comprehension. The Phonological Processing Assessment assessed Student's phonological processing speed and memory, and ability to recall information. Bonita Unified considered Student's visual processing needs by reviewing and considering Bonita Unified's October 2020 visual process testing and Dr. Ballinger's report. Bonita Unified established the assessment produced reliable and valid information for Student's educational and behavioral needs. (34 C.F.R. § 300.304(b)(1), (3); Ed. Code, § 56320, subd. (b)(1).) As a result, Bonita Unified proved its assessment in these areas were appropriate and met all legal requirements.

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STUDENT'S ISSUE 2: DID BONITA UNIFIED DENY STUDENT A FAPE BY FAILING TO APPROPRIATELY CONDUCT ITS OCTOBER 11, 2022, SPEECH AND LANGUAGE ASSESSMENT?

BONITA UNIFIED'S ISSUE 4: WAS BONITA UNIFIED'S OCTOBER 11, 2022, SPEECH AND LANGUAGE EVALUATION APPROPRIATE SUCH THAT BONITA UNIFIED IS NOT REQUIRED TO FUND AN INDEPENDENT SPEECH AND LANGUAGE EVALUATION AT PUBLIC EXPENSE?

Student's Issue 2 and Bonita Unified's Issue 4 are identical and therefore are addressed together in this Decision. Bonita Unified contends its speech and language assessment was appropriate and comprehensively assessed Student's speech and language needs. Student contends the assessment was not sufficiently comprehensive to assess Student's communication needs, and specifically Student's articulation difficulties, struggle pronouncing multisyllabic words, and pragmatic language deficits.

A speech and language pathologist assesses whether a student is eligible for special education based on difficulty understanding or using spoken language for such an extent that it adversely affects their educational performance and cannot be corrected without special education and related services. (Ed. Code, § 56333.)

Bonita Unified proved its October 11, 2022, speech and language assessment was legally compliant. Bonita Unified's speech and language pathologist Carolina Macias provided speech therapy to Student during the 2022-2023 school year and assessed her

in the area of speech and language as part of Student's three-year review in October 2022. Macias assessed Student over five sessions on August 25, September 22 and 29, and October 6 and 11, 2022, and issued a report dated October 11, 2022.

Macias was employed as a speech and language pathologist for Bonita Unified for approximately eight years. She held a master's degree in communicative disorders and was a credentialed speech and language pathologist. Macias regularly conducted assessments and provided direct services to students with communicative disorders and other speech and language related needs. Macias's testimony was thorough and deliberate, and demonstrated a strong understanding about Student's speech and language needs. Her testimony was persuasive and given substantial weight.

Parent was concerned Student's speech was not intelligible to unfamiliar listeners, and she had difficulty producing multisyllabic words, learning new concepts and vocabulary, interacting with peers, and initiating and maintaining conversations. Parent expressed concerns about Student's deficits in pragmatic language skills, including her inability to use appropriate grammar and follow directions. Parent reported Student had social anxiety.

Macias obtained input from Student's general and special education teachers. Both teachers reported Student did not have intelligibility, articulation, or social skills deficits. Special education teacher Castro reported Student appropriately communicated her wants and needs and asked and answered questions. General education teacher Leahy reported a concern about Student answering questions with one-word or short sentences.

Macias evaluated Student in all areas of suspected disability, specifically voice, fluency, articulation, phonology, receptive language, expressive language, and pragmatics. Macias used a variety of assessment tools, including a review of Student's records, input from Parent and Student's teachers through questionnaires, testing and classroom observations of Student, and standardized assessment measures. Macias chose assessments that were not racially, culturally, or sexually discriminatory and administered them in Student's native language. Macias followed the protocols for all of the assessments. Macias administered the following informal and standardized assessment measures:

- Informal Oral Peripheral Examination;
- Goldman-Fristoe Test of Articulation, Third Edition;
- Informal Speech Sample;
- Receptive One Word Picture Vocabulary Test, Fourth Edition;
- Expressive One Word Picture Vocabulary Test, Fourth Edition;
- Comprehensive Assessment of Spoken Language, Second Edition;
- Informal Language Sample; and
- Orion's Pragmatic Language Skills Questionnaire.

Macias performed an oral peripheral examination and concluded Student's oral and facial structures were symmetrical and adequate for speech production. Student's overall pitch, quality, and volume were within functional limits.

Macias observed Student in the classroom in one 20-minute observation and noted Student's behavior in her written report. (Ed. Code, § 56327.) Student sat at her desk near the front of the classroom. Student listened to the teacher and took notes. She followed her teacher's instruction to look at the board. Student did not raise her

hand in response to questions posed by the teacher. In response to a direct question by her teacher, Student correctly answered a question about the title of an article. Student's speech was intelligible, but her volume was low. The teacher called on Student another time and asked her to say the word, "subjective." Student was able to break down and repeat the word correctly.

Macias also observed Student during testing. Student was cooperative and transitioned easily into the assessment room. Student responded to Macias's direction to stay on task. Student willingly participated.

Macias conducted an informal speech sample to determine Student's intelligibility. Student produced 603 words during a 58-utterance speech sample. Student produced all 603 words, including multisyllabic words, correctly and intelligibly. Macias determined Student's articulation and phonology at the single word level, sentence level, and spontaneous connected speech level was age appropriate and not areas of concern.

The Goldman-Fristoe Test of Articulation, Third Edition, was an individually administered standardized assessment to measure speech sounds, or articulation. It was comprised of two tests: Sounds in Words and Sounds in Sentences. Macias had administered this assessment over 200 times. At hearing, Macias opined this instrument was administered to obtain a representative sample of Student's sound production at a single word and sentence level. Student did not display articulation errors at the single word or sentence level and scored in the average range for her chronological age.

Macias administered the Receptive One Word Picture Vocabulary Test, Fourth Edition, to measure Student's understanding of vocabulary by asking her to identify illustrations of words presented orally. This assessment measured Student's ability to

comprehend spoken language. Student scored in the average range for her chronological age. Macias deemed Student's receptive vocabulary skills age appropriate and not an area of concern.

The Expressive One-Word Picture Vocabulary Test, Fourth Edition, measured Student's speaking vocabulary by asking Student to name objects, actions, and concepts presented in illustrations. Student scored in the average range. Macias concluded Student's expressive vocabulary skills were age-appropriate and not an area of concern.

Macias administered the Comprehensive Assessment of Spoken Language, Second Edition, called Comprehensive Language Test, to evaluate Student's overall understanding and use of oral language. This assessment provided an in-depth evaluation of an individual's language skills, including

- receptive and expressive language skills,
- social skills,
- syntax,
- word order and sentence structure, and
- morphology, or combining parts of words to create different meanings.

The assessment was comprised of individual subtests, which were grouped into indexes showing how Student processed language auditorily and verbally. On the general language ability index, which measured Student's overall spoken language skills, Student scored in the average range. On the receptive language index, which evaluated Student's overall skills in auditory comprehension, Student scored in the average range. Student similarly scored in the average range on the expressive language index, which

measured Student's overall skills in oral expression. Student's overall word knowledge on the lexical and semantic index was average, as was her overall understanding of grammar on the syntactic index.

In her closing brief, Student unpersuasively argued Bonita Unified's speech and language assessment did not assess for a phonological disorder. A phonological disorder is a type of speech sound disorder which causes the inability to correctly form the sounds of words. This assertion directly contradicted the weight of the evidence which proved Bonita Unified assessed Student for a phonological disorder. At hearing, Macias persuasively opined the Comprehensive Language Test evaluated Student's ability to process language auditorily and verbally. The receptive vocabulary index measured Student's ability to comprehend words. Student scored in the average range. The receptive language index measured Student's overall skills in auditory comprehension, and included subtests in

- receptive vocabulary,
- synonyms,
- sentence comprehension, and
- meaning from context.

Student scored in the average range. Student presented no evidence, including expert testimony by a credentialed speech and language pathologist, challenging the adequacy of Macias's evaluation of Student's phonological processing abilities in language and speech.

Macias also evaluated Student's pragmatic language skills through informal observations, a Parent questionnaire, a formal assessment, and teacher input. Student

communicated appropriately with adults and peers. Student's general education and special education teachers reported no concerns about Student's pragmatic language skills. They reported Student skills within the classroom setting were age appropriate. Macias also considered and incorporated Iavicoli's observations of Student participating in physical education class and interacting with her peers.

Macias reported Student's scores on the pragmatic subtests on the Comprehensive Language Test fell in the average range. More specifically, Student's scores on the inference, pragmatic language, and nonliteral language subtests were age appropriate.

Macias considered Parent's responses on the Orion's Pragmatic Language Skills Questionnaire, an informal rating scale to rate a student's skills in the areas of

- nonverbal communication,
- expressive abilities,
- conversational skills – topic maintenance and turn taking,
- speech conventions, and
- peer skills.

Parent rated Student as engaging in these skills either about half the time or rarely, which placed Student in the below average range for her age. Macias persuasively explained there was a noticeable discrepancy between Parent's reporting of Student's pragmatic language skills outside the school setting and the observations by Macias, Student's teachers, language samples, and standardized testing results. For example, on the Comprehensive Language Test, Student scored in the average range on the

pragmatic language and inference skills subtests and demonstrated an understanding of social rules and making appropriate responses in social situations. Macias determined Student possessed adequate communication skills, including

- age-appropriate pragmatic skills,
- correct word order,
- utilized a variety of vocabulary, and
- demonstrated age-appropriate grammatical skills.

Parent disagreed Bonita Unified's speech and language assessment appropriately evaluated Student's speech and language needs. Parent and Student's attorney told the October 17, 2022, IEP team, Student could not read, say, or spell fifth grade level words and struggled doing homework independently. Parent shared a recording of Student pronouncing multisyllabic words. Macias explained Student could correctly pronounce words on the Goldman-Fristoe Test of Articulation and did not demonstrate any articulation errors. Macias explained to Parent that Student's struggles pronouncing multisyllabic words was not due to an articulation disorder, but likely attributable to lack of familiarity with the new multisyllabic words presented. Macias shared strategies for breaking up multisyllabic words. For example, words could be frontloaded by stating the word and breaking it into parts.

Student's general and special education teachers also did not share Parent's concerns about Student's ability to pronounce multisyllabic words. Castro did not observe Student struggling with multisyllabic words during specialized academic instruction. At hearing, Leahy explained that at the beginning of the 2022-2023 school year, Student was shy and spoke quietly. Leahy noticed Student sometimes had trouble

pronouncing unfamiliar multisyllabic words. Leahy used strategies with Student to help her pronounce multisyllabic words, including breaking the words apart into single syllables and modeling their pronunciation.

At hearing, Parent's attorney questioned Leahy about whether she was present at the October 17, 2022, IEP team meeting and listened to a recording of Parent asking Student to repeat a series of multisyllabic words. Leahy was present at the IEP team meeting and passionately disagreed with Student being asked a series of multisyllabic words without proper context and asked to repeat them. She opined various strategies are used for teaching multisyllabic words to students, including frontloading the word, explaining the context and its meaning, and asking the child to repeat the word. She persuasively explained Student was able to state multisyllabic words in the classroom setting.

General education intervention teacher Lawless also did not observe Student having difficulty pronouncing multisyllabic words. Lawless worked with Student three times weekly for 30 minutes each session and provided general education reading intervention services during fall of 2022. Lawless also listened to the recording of Parent asking Student to pronounce multisyllabic words as Lawless wrote down the words and went over them with Student a couple of weeks later. She persuasively opined that Student intelligibly pronounce the words.

Student testified at hearing. Student was shown a list of 12 multisyllabic words by her attorney and asked to pronounce them. Student's attorney did not explain how the words were selected, or whether they were words contained within fifth-grade general education curriculum. The words included, among others, "experiment," "subtraction,"

"infinity," and "chemicals." Student slowly and correctly pronounced each word. Student's language was intelligible. Student presented no expert testimony or other convincing evidence establishing Bonita Unified failed to assess for an articulation deficit.

Student did not offer evidence refuting the appropriateness of the speech and language assessment tools selected, demonstrate they were administered inappropriately, or challenge the assessor's interpretation of the results. Student also offered no expert testimony by a speech language pathologist disputing the appropriateness of Bonita Unified's speech and language assessment.

Macias prepared an October 11, 2022 report summarizing her findings. Macias determined Student did not meet the eligibility for special education under the category of speech or language impairment. Macias shared her report with the October 17, 2022 and December 7, 2022, IEP teams. The October 11, 2022, speech and language evaluation and report complied with statutory requirements. (Ed. Code, § 56327.) The report was timely given to Parent after the assessment within 60 days when the IEP team meeting was held to consider the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56302.1, subd. (a), 56329, subd. (a)(3).)

The report included detailed information about Student's speech and language skills, input from Parent and Student's general and special education teachers. The report included the results from various informal and formal standardized tests, and Macias's observations during testing, delivery of speech and language services, and in the classroom. The report analyzed whether Student met eligibility for special education under the category of speech and language impairment. (Cal Code Regs.,

tit. 5, § 3030(11.) Bonita Unified proved its speech and language assessment was thorough and complete. Bonita Unified proved by a preponderance of the evidence its speech and language assessment met all legal requirements.

CONCLUSIONS AND PREVAILING PARTY

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

STUDENT'S ISSUE 1A:

Bonita Unified did not deny Student a FAPE by failing to appropriately conduct its October 11, 2022, psychoeducational assessment pursuant to the June 30, 2022, and August 8, 2022, assessment plans.

Bonita Unified prevailed on Issue 1A.

STUDENT'S ISSUE 1B:

Bonita Unified did not deny Student a FAPE by failing to assess Student in all areas of suspected disability pursuant to the June 30, 2022, and August 8, 2022, assessment plans.

Bonita Unified prevailed on Issue 1B.

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STUDENT'S ISSUE 2:

Bonita Unified did not deny Student a FAPE by failing to appropriately conduct its October 11, 2022, speech and language assessment.

Bonita Unified prevailed on Issue 2.

BONITA UNIFIED'S ISSUE 3:

Bonita Unified's October 11, 2022, psychoeducational evaluation was appropriate such that Bonita Unified is not required to fund an independent neuropsychological evaluation at public expense.

Bonita Unified prevailed on Issue 3.

BONITA UNIFIED'S ISSUE 4:

Bonita Unified's October 11, 2022, speech and language evaluation was appropriate such that Bonita Unified is not required to fund an independent speech and language evaluation at public expense.

Bonita Unified prevailed on Issue 4.

ORDER

1. All Student's claims for relief are denied.
2. Bonita Unified's October 11, 2022, psychoeducational evaluation was appropriate. Student is not entitled to, and Bonita Unified is not required to fund, an independent neuropsychological evaluation at public expense.

3. Bonita Unified's October 11, 2022, speech and language evaluation was appropriate. Student is not entitled to, and Bonita Unified is not required to fund, an independent speech and language evaluation at public expense.

RIGHT TO APPEAL THIS DECISION

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

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings