

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:
REDLANDS UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013120507

DECISION

District filed the Due Process Hearing and Mediation Request with the Office of Administrative Hearings, State of California on December 13, 2013. A continuance was granted for good cause on December 24, 2013.

Administrative Law Judge Sabrina Kong heard this matter in Redlands, California, on February 18, 19, 20, 25, and 26, 2014.

Karen Gilyard, attorney at law, represented the District. Gayle Hinazumi, District's Director of Special Services, attended the hearing on all days on District's behalf. Peter Attwood, advocate, and Mother represented Student. Mother attended the hearing on all days.

At the hearing, the ALJ received sworn testimony and documentary evidence. At the close of the hearing on February 26, 2014, the ALJ granted the parties' request for a continuance to file written closing arguments by 10:00 a.m. on March 24, 2014.¹ The

¹ Student filed a Request for Judicial Notice on March 14, 2014, which was denied in a separate order.

parties filed their written closing arguments on March 24, 2014, at which time the record was closed and the matter was submitted.

ISSUES

Whether the following District assessments and reports were appropriate, such that District need not provide independent educational evaluations (IEE's):

1. October 2013 adapted physical education (APE);
2. October 2013 Verbal Behavior Milestones Assessment and Placement Program (VB-MAPP);
3. October 2013 psycho-educational;
4. October 2013 health update;
5. October 2013 language, speech and hearing;
6. October 2013 assistive technology (AT); and
7. November 2013 functional analysis assessment and positive behavior intervention plan.

SUMMARY OF DECISION

District contends its 2013 APE, VB-MAPP, psycho-educational, health update, language speech and hearing, AT, and behavior assessments (collectively referred to as Assessments) of Student were appropriate, such that it need not fund the IEE's requested by Student. Student contends none of the Assessments were properly conducted.

District demonstrated by a preponderance of the evidence that the proper assessors assessed Student pursuant to a signed assessment plan, the tests were properly selected and conducted, and that the subsequent reports yielded helpful information for the individualized education program (IEP) team to address Student's unique educational needs. District tested Student in his primary language, in the best

environment available after Parents withdrew Student from school, and with input from the appropriate people, including a teacher who has known and worked with Student the longest. Student did not present persuasive evidence demonstrating that District's assessment setting was inappropriate, or that District's assessors made more than minor deviations from what Parents deemed as appropriate assessments and reports. In sum, District prevailed on all issues, and Student is not entitled to IEE's at public expense in any of the identified areas.

FACTUAL FINDINGS

1. Student is a seventeen-year-old boy who is eligible for special education services under the eligibility categories of autistic-like behaviors and intellectual disability. Student was properly enrolled within District's Redlands High School at all relevant times as a ninth grader, but as of the dates of hearing was not attending school because Parents withdrew him from school and declined special education services around June 2013. Instead, Parents kept Student at home, and arranged sessions at Hope, Inc. for behavioral and AT services, Leaps and Bounds for occupational therapy services, and Loma Linda University for speech services.

2. Although they had formally declined special education services and disenrolled Student from District in June 2013, in August 2013 Parents requested an initial assessment to determine Student's eligibility for special education. District sent Parents an assessment plan, but Parents requested additional assessments, and District sent a revised assessment plan on September 4, 2013. Mother signed and returned both the initial assessment plan and revised assessment plan, but dated both August 27, 2013. As a result, Mother's signature pre-dated the revised assessment plan, and District was confused as to which assessment plan Mother had consented to. On September 6, 2013, Mother left voicemails explaining what she had done. However, the confusion over which assessments were to be completed was not resolved until September 19,

2013, and District confirmed Mother's consent to the revised assessment plan by an e-mail to Mother that same day. District timely provided a copy of the Procedural Safeguards and Parents' Rights (Parents' Rights) to Parents.

3. District conducted the Assessments in accordance with the signed revised assessment plan and held an initial IEP team meeting on November 15, 2013. District's assessors, Martha Mendoza, Shannon Vogt, Sarah Knipscheer, Martha Hone-Warren, Cheri Gale-Sadler, Jennifer Yaghobian and Conor Kelly all attended the November 15, 2013 IEP team meeting. Continuations of the November 15, 2013 IEP team meeting were held on December 6, 2013 and January 23, 2014. Parents and Mr. Attwood were present at all three meetings. All assessors shared their findings and reports at the IEP team meetings.

4. On November 19, 2013, Student requested IEE's at public expense in the areas covered by the Assessments. On December 3, 2013, District denied Student's requests for various IEE's. Within a reasonable time, on December 13, 2013, District filed its request for a due process hearing.

5. Although a second language, Konkani, was spoken at home, Student's primary language was English.

MS. MENDOZA, APE

6. The APE assessment was conducted by Ms. Mendoza. Ms. Mendoza had been the District's APE teacher for 30 years. She has a Bachelor of Arts in Physical Education, a teaching certificate in APE, and an APE certificate. Ms. Mendoza assessed Student in the District's boardroom on October 18, 2013. Although she typically conducted APE assessments outdoors, she decided an indoor assessment would be more appropriate for Student because it was quieter and had fewer distractions.

7. Ms. Mendoza administered the Test of Gross Motor Development (TGMD) and Apache Motor Skills Assessment Test (Apache) to evaluate Student's object control

and locomotor skills. Ms. Mendoza had administered the TGMD over 1000 times, and the Apache approximately 50 times. Although the TGMD is typically administered to 10-12 year olds, it was an appropriate assessment tool in assessing Student when used in conjunction with the Apache. The TGMD allowed Ms. Mendoza to evaluate Student's basic skills, such as throwing, catching, and kicking. The Apache is administered to older students to evaluate advanced gross motor skills, but Ms. Mendoza found that the advanced skills assessed by the Apache were too difficult for Student. Ms. Mendoza observed that Student had good functional skills and could throw, catch, and kick, but had difficulty executing these tasks with proper technique (*e.g.* proper follow through while throwing a tennis ball). She also observed that Student had difficulty executing the advanced skills required by the Apache (*e.g.* dribbling a basketball with staggered feet, bent knees, and proper rhythm), but noted that he could dribble a basketball with both hands. Student scored around the first percentile in both the TGMD and Apache, and on that basis qualified for APE services.

8. Ms. Mendoza used the California standards for ninth grade PE in assessing Student, and followed tests instructions and protocols in evaluating Student. Before assessing Student, Ms. Mendoza reviewed Student's previous records. She did not read any of Parents responses to questionnaires submitted in response to other assessments because she did not need them for a comprehensive APE evaluation. Ms. Mendoza did not specifically assess Student's ability to run a mile or perform sit-ups and push-ups because such tests were inappropriate given Student's skill level and the activity which would be required from Student. Student's running skills would be incorporated in the participation of other PE activities rendering a separate evaluation unnecessary. These tests were also unnecessary for evaluating Student's object control and locomotor skills. Ms. Mendoza did not provide written recommendations to the IEP team in advance of the November 15, 2013 IEP team meeting so that the team could

come up with recommendations after discussions on her findings. She also did not specifically address Student's anxiety in the APE report, because this would more appropriately be addressed in context when it arose.

Ms. VOGT, VB-MAPP

9. The VB-MAPP assessment of Student's academic abilities was conducted by Ms. Vogt. Ms. Vogt had been a teacher on assignment with District for approximately two years, working with autistic children and children with behavioral issues. Her duties included training teachers in applied behavioral analysis strategies, curriculum instruction, and AT. She handled AT training for school psychologists, speech pathologists, mild/moderate teachers, and VB-MAPP trainings for moderate/severe special education teachers. Before her current assignment, Ms. Vogt had been a special day class teacher for moderate/severe students and an applied behavioral analysis class teacher for District. Ms. Vogt received a Bachelor of Arts in Education from the State University of New York College at Buffalo. She also has a Cleared Special Education Moderate/Severe Credential from the University of California at Riverside, and is working towards receiving her Masters in May 2014 in Curriculum and Instruction, Teaching and Learning instruction for autistic children and children with developmental delays, with an emphasis in Board Certified Behavior Analysis. Her training in assessing students on the autism spectrum included SELPA trainings throughout 10 years of teaching, 40 hours of applied behavioral analysis training, and Assessment of Basic Language and Learning Skills-Revised (ABLLS-R) and VB-MAPP trainings. She has assessed approximately 30 children on the autism spectrum in her 10 years teaching. She is also a certificated AT assessor.

10. Ms. Vogt has known Student since 2005. Student was in her moderate/severe class at Franklin Elementary for three years, from 2005 to 2008. Student was also in her applied behavioral analysis class, at Mariposa Elementary, from

the fall of 2008 to June 2010. Thereafter, Student received home hospital instruction from Ms. Vogt from January 2013 to February 2013. In addition to interacting with Student on an ongoing basis when Student was in her classes, Ms. Vogt assessed Student with the VB-MAPP in October 2013 and, together with Ms. Yaghobian, assessed Student's AT needs with input from Ms. Gale-Sadler. Ms. Vogt had administered the VB-MAPP test approximately 120 times.

11. Ms. Vogt prepared for the VB-MAPP assessment by communicating with Mother before the test, and gathering test materials which included a token board and items which Student enjoyed to reward Student's cooperation during testing. She chose the VB-MAPP after reviewing Student's file and records, which included his present levels of performance, goals in the 504 Plan, and various independent evaluations and IEPs. Ms. Vogt concluded that the VB-MAPP was a good tool to evaluate Student's strengths and weaknesses and to create appropriate IEP goals to support Student's academic needs. While the ABLLS-R could have provided additional information regarding skills outside of the educational setting (*e.g.* toileting, dressing, community skills and grooming), Ms. Vogt did not assess Student with the ABLLS-R because she was more familiar with the VB-MAPP, and the VB-MAPP was a comprehensive assessment for skills needed in the educational setting. She administered the VB-MAPP to Student in four sessions of approximately one to three hours long in one of District's trailers. She followed the test instructions and protocols in administering the VB-MAPP.

12. The five components of the VB-MAPP assessments are Milestones, Barriers, Transition, Task Analysis and Skills Tracking, and Placement and IEP Goals. Ms. Vogt administered two out of five components of the VB-MAPP to Student, the Milestones and the Placement and IEP Goals assessments. These components evaluated Student's mand (ability to make demands to have needs and wants met), tact (ability to name things, actions, and attributes in the immediate environment), echoic skills (ability

to repeat words of a speaker), intraverbal skills (ability to respond to others' words and talking about things and activities that are not present), listener responding skills (ability to attend, understand, and respond to a speaker), motor imitation (ability to copy the motor movement of others), independent play (ability to spontaneously engage in play with toys), visual perceptual and matching-to-sample skills (ability to execute visual perceptual and match-to-sample tasks (VP-MTS)), linguistic structure skills (ability to use sophisticated words, phrases, sentence structure, articulation, vocabulary size, length of utterances, appropriate use of modifiers for nouns and verbs, and inflection) and early academics skills (textual reading, math, and writing skills). The mand, tact, listener responding, independent play, and VP-MTS skills were assessed across a zero-48 month level. The motor imitation skill assessed across a zero-30 month level. The early academic skills of textual reading, math, and writing were assessed across a 30-48 month level. The echoic, intraverbal, and listener responding skills were assessed across an 18-30 month level. Student scored in the 18-30 month range in all skills measured with the exception of the early academic skills of textual reading, math, and writing, where Student scored in the 30-48 month range.

13. Student was able to communicate 10 different demands, and understand six demands from two different people in two settings. He was able to label 10 actions when asked "what am I doing", was able to label 25 items when asked "what's this." He was able to perform 10 specific motor actions and select the correct item from a group of six pictures for 20 different objects (*e.g.* find cat and touch ball). He was able to match three dimensional, non-identical objects to two dimensional pictures and vice versa in a messy array of 10 containing three similar stimuli for 25 items. He was able to independently engage in movement play for two minutes and independently engage in cause and effect toys for two minutes over a period of 30 minutes. He was able to imitate 20 different fine motor actions and 10 different three-component sequences of

actions when prompted, and imitate approximations of any novel motor action modeled by an adult with or without objects. He was able to attend to a book when a story is being read 75% of the time for three minutes, label 10 uppercase letters on command, and read his own name. He was able to select five different food or drinks when each was presented in an array of five and asked to fill in, "You eat____". He was able to fill in statements such as "You sit on a____." He was able to echo the words of another speaker, and scored all the points in the areas of echoic and spontaneous vocal behavior. He was unable to trace, or copy, letters and numbers legibly. He was able to identify numbers one through five, find the numbers and count, but did not understand concepts of comparison measurements such as same, more, and less. He was able to provide his first name when asked "What is your name?" He had a listener vocabulary of 100 words and a speaker vocabulary of 300 words. Ms. Vogt was unable to assess Student in two areas, social behavior and play, and classroom routines and group skills, because of the absence of a peer group environment since Student was not attending school.

14. Ms. Vogt proposed 12 goals based on Student's performance across all categories assessed and presented them for discussion at an IEP team meeting.

MS. KNIPSCHER, PSYCHO-EDUCATIONAL

15. The psycho-educational assessment was conducted by Ms. Knipscheer. Ms. Knipscheer has a Bachelor of Arts in Communication Studies, a Master's degree in Education Psychology, and a California Professional Clear Pupil Personnel Services Credential in Psychology. She had been a school psychologist for District for seven years.

16. Ms. Knipscheer assessed Student in one of District's trailers on October 17 and 24, 2013. She administered the Kaufman Brief Intelligence Test, 2nd Edition (KBIT-2), Beery-Buktenica Developmental Test of Visual-Motor Integration, 6th

Edition (Beery VMI), and Test of Visual Perceptual Skills 3rd Edition (TVPS-3) to Student. She also obtained parent and teacher questionnaires from the Behavior Assessment System for Children, 2nd Edition (BASC-2), Social Responsiveness Scale (SRS), and Adaptive Behavior Assessment System, 2nd Edition (ABAS-II). Mother completed the parent questionnaires and Ms. Vogt, as the teacher who had taught Student the longest, completed the teacher questionnaires. Ms. Knipscheer is qualified to administer these tests and had administered each of them over 200 times.

17. Ms. Knipscheer reviewed Student's file, several previous IEE reports, and responses to questionnaires as part of her evaluation of Student. Ms. Knipscheer assessed Student in cognitive, social/emotional and psychomotor functions, adaptive behavior, and pre-vocational interests. Ms. Knipscheer relied on Ms. Vogt's VB-MAPP assessment of academic skills to complete the academic testing portion of the psycho-educational assessment. Since Student was not attending school, Ms. Knipscheer observed Student for one and a half hours while Ms. Vogt was conducting academic testing to see Student perform in a setting that was the closest to a classroom for this Student. Ms. Knipscheer relied on Ms. Gale-Sadler to conduct the language, speech, and hearing assessment portion of the psycho-educational assessment, but observed that Student exhibited some echolalia, which was also found by Ms. Gale-Sadler.

18. Due to Student's speech and language difficulties, Ms. Knipscheer administered the nonverbal subtest of the KBIT-2 to measure Student's cognitive abilities. This subtest required Student to demonstrate an understanding of visual stimuli relationships by pointing at pictures and tested his nonverbal reasoning. For example, Student was shown a picture of a colorful puzzle and was instructed to point to the missing piece. Student scored in the lower extreme range, in the less than .1% range for same age peers, the age equivalency of a child under four years old, which was consistent with the presence of cognitive delay. Ms. Knipscheer administered the

Beery VMI to test Student's ability to integrate his visual and motor abilities. The test required Student to copy geometric shapes. Student scored in the very low range which was indicative of very low visual motor integration skills, but not indicative of visual motor skills delay. She also administered one subtest of the TVPS-3, out of a battery of seven subtests that measure visual perceptual and visual-motor abilities. The visual perception subtest measured Student's ability to understand, interpret, remember what was seen, and express meaning verbally or by pointing. Ms. Knipscheer attempted the visual memory subtest three times, but discontinued the test because Student could not understand the directions, thereby invalidating the results. Student pointed to all shapes instead of picking one shape when responding to a question. Student received a zero for this subtest.

19. Student scored in the clinically significant classification range under Mother's responses to the BASC-2 Behavioral Symptoms Index that evaluated Student's overall level of problem behavior based on hyperactivity, aggression, depression, attention problems, atypicality and withdrawal, and in the at-risk classification range under Ms. Vogt's responses. Student scored in the at risk classification range under Mother's rating of the BASC-2 Externalizing Problems Composite that evaluated Student's disruptive behavior to peers' and adults' activities and was found to be unresponsive to adult direction, and in the average classification range under Ms. Vogt's rating. Student scored in the at risk classification range under Mother's rating of the BASC-2 Internalizing Problems Composite that evaluated Student's level of inwardly directed distress including anxiety, depression and somatization, and in the average classification range under Ms. Vogt's rating. Student scored in the clinically significant classification range under Ms. Vogt's rating of the BASC-2 School Problems Composite which evaluated Student's academic difficulties including motivation, attention, learning and cognition problems. Student scored in the clinically significant classification range

under both Mother's and Ms. Vogt's ratings of the BASC-2 Adaptive Skills Composite that evaluated Student's appropriate emotional expression and control, daily living skills inside and outside the home, communication, organizational, pro-social, study, and other adaptive skills.

20. Ms. Knipscheer administered the SRS. The SRS is an instrument used to establish or rule-out the diagnosis of autism spectrum disorders. In the SRS, Student scored in the severe range which is associated with a diagnosis of autistic disorder that interferes with everyday social interactions under both Mother's and Ms. Vogt's ratings.

21. The ABAS-II was used to assess Student's everyday functioning in the areas of communication, community use, functional academics, school living, health and safety, leisure, self-care, self-direction, and social. Student scored in an extremely low range under both Mother's and Ms. Vogt's ratings.

22. Ms. Knipscheer also provided a pre-vocational interest questionnaire to Mother who reported that Student's main interests and aspirations included music, computers, and belonging to the community.

23. Ms. Knipscheer was not aware that Student had been retained in the eighth grade for two years.

24. Ms. Knipscheer concluded that Student qualified for special education services under the categories of autistic-like behaviors and intellectual disability. She found that Student exhibited an inability to use oral language for appropriate communication, had a history of extreme withdrawal or of relating to people inappropriately, had continued impairment in social interaction from infancy through early childhood, exhibited an obsession to maintain sameness, exhibited an extreme pre-occupation or inappropriate use of objects, displayed peculiar motor mannerisms and motility patterns, and exhibited self-stimulating, ritualistic behaviors. She also found that Student demonstrated deficits in adaptive behavior that manifested during the

developmental period and which adversely affected Student' educational performance and was significantly below average intelligence function.

MS. HONE-WARREN, HEALTH

25. The health assessment was conducted by Ms. Hone-Warren. Ms. Hone-Warren had been the District's school nurse for 14 years. She has a Bachelor of Science degree in nursing, a Master's degree in nursing, a school nurse credential, and a multiple subjects teaching credential. She is also certified as a registered nurse, a public health nurse, a clinical nurse specialist, and holds a Professional Clear School Nurse Services credential.

26. The District's standard of practice permitted preparation of health updates using information shared by Parents and available in a student's file and did not require a meeting with student. Ms. Hone-Warren requested a meeting with Mother and Student, but Mother preferred providing the information by phone because of scheduling difficulties. Ms. Hone-Warren prepared the health update with information provided by Mother in a telephone interview on October 16, 2013, and from a review of the medical records in Student's file. Ms. Hone-Warren found the information in Student's medical records consistent with the information shared by Mother. Ms. Hone-Warren concluded that based on Student's height, weight, and age, Student's body mass index of 21 percent showed that he was at a healthy weight in October 2013. She did not report any specialized health care procedures in the health update because Mother did not share any information about specialized health care procedures ordered by a physician to be administered to Student such as insulin administration or medication instructions. Mother reported to Ms. Hone-Warren that Student had fine motor issues which impacted his personal hygiene, but confirmed that he did not have any mobility issues requiring braces, wheelchair, or supportive mobility equipment.

27. Ms. Hone-Warren did not conduct any hearing or vision tests because others specializing in those fields would be handling them.

MS. GALE-SADLER, SPEECH, LANGUAGE, AND HEARING

28. The language, speech, and hearing assessments were conducted by Ms. Gale- Sadler. Ms. Gale-Sadler has a Bachelor of Science in speech pathology and audiology, a minor in psychology, and a Master of Science degree in speech pathology. She is a certified speech/language pathologist, and has a certificate of clinical competence from the American Speech & Hearing Association, a teaching credential for speech and language pathology for handicapped classes, and a certificate for audiometry. She had been a speech and language pathologist with the District for 32 years, and had 39 years of experience assessing children on the autism spectrum in the areas of speech and language pathology.

29. Ms. Gale-Sadler assessed Student in school on October 4, 10, and 18, 2013, for approximately one hour per session. Student was assessed in all speech and language areas, including articulation, fluency, voice, language, and communication. Ms. Gale-Sadler also attempted to assess Student's hearing, but was unsuccessful because Student did not comprehend the task of raising his hand when he heard a sound regardless of volume. As a result, Parent desired to have Student tested for a central auditory processing disorder (CAPD). In the area of hearing, Ms. Gale-Sadler concluded that Student was unable to train to task, but did not deem Student hearing impaired because Student was able to respond in other areas of the assessment. Student was not deemed to have a CAPD which required testing. She administered to Student the expressive one-word picture vocabulary test (EOWPVT-4), receptive one-word picture vocabulary test (ROWPVT-4), clinical evaluation of language fundamentals (CELF-4), Fisher-Logemann Test of Articulation Competence, pure-tone hearing screening, conversation, non-speech test, informal assessments, and Functional

Communication Profile-Revised (FCP-R). Ms. Gale-Sadler had administered each of these tests over 50 times. She followed test instructions and scoring protocols. She reviewed Student's file including various reports and evaluations conducted of Student. She found that Student had an extensive vocabulary but did not initiate communication, had rote skills, and exhibited severe receptive, expressive and pragmatic language delays.

30. Ms. Gale-Sadler observed Student's behaviors during testing and reported that Student showed inconsistent motivation, appeared distracted, and at times did not respond to her. Student's responses were impulsive as demonstrated by his pointing to responses before looking at the picture of the test materials. Student was able to stay on task with redirection, prompts, and token awards which rewarded him with a preferred item or activity. Student had limited rapport with her, and exhibited fair attention, but required redirection and prompts, had frequent inappropriate responses, and engaged in excessive self-stimulation behaviors including loud vocalizations and flicking hand movements throughout testing.

31. Ms. Gale-Sadler assessed Student's articulation of speech skills by observing Student and by administering the Fisher-Logemann Test of Articulation Competence. Student made consistent sound errors that were not age-appropriate, and blended the "th," "s," and "z," sounds, substituted "t" and "d" for "th," substituted the "w" for "r," but was intelligible 85 percent to 95 percent of the time to both unfamiliar and familiar listeners, respectively. Ms. Gale-Sadler observed that Student had no voice disorder, but that he had poor prosody, poor volume control, and echolalia. She did not observe any fluency issues such as prolonged repetitions or stuttering.

32. Ms. Gale-Sadler assessed Student's pragmatics speech and language skills through her observations and interviews with Mother, Ms. Vogt, Ms. Yaghobian, Ms. Knipscheer, and Mr. Kelly. She did not administer any formal pragmatics test to Student because she felt it would be too challenging for Student. She only observed

Student's social skills in the assessment setting, and was unable to observe Student's social skills in a typical classroom environment because Student was not in school. She noted that Student had fleeting eye contact, preferred to be alone, did not initiate conversation, and had social difficulties such as the inability to maintain reciprocal conversation, listen, and attend without gestural prompts or prompts using his name.

33. In the areas of receptive and expressive language communication, Student scored in the two-year-old range in both the ROWPVT-4, which required him to demonstrate understanding by pointing to pictures corresponding to words stated, and the EOWPVT-4, which required him to demonstrate ability to use words by verbally labeling pictures and providing synonyms. Ms. Gale-Sadler attempted, but had to discontinue, the CELF-4, which measures ability to understand concepts, follow directions, and recall sentences, because Student had difficulty performing the trials and she was unable to obtain correct responses despite multiple prompts and cues. A basal score was reached on the ROWPVT, but a basal score could not be reached on the EOWPVT-4 or the CELF-4. In addition to the EOWPVT-4 and ROWPVT-4, Ms. Gale-Sadler also used the non-speech test and the FCP-R as additional avenues of assessing Student's speech and language skills. The non-speech test, a checklist which detailed Student's receptive and expressive abilities, was completed by Mother. Mother, Ms. Vogt, and Ms. Gale-Sadler all completed the functional communication profile, a checklist of reported observations of students with developmental delays, regarding Student. The non-speech test age range is 25-28 months and the functional communication profile has no established age range for testing. Mother's report of Student's receptive and expressive language skills at home exceeded what was observed and measured during the testing.

34. Ms. Gale-Sadler reported that Student used verbal communication to get his needs and wants met, but that Student could benefit from the use of AT for

communication and for academic needs. She provided input to Ms. Vogt and Ms. Yaghobian in their AT assessment.

35. The variety of tests used by Ms. Gale-Sadler in her assessment provided a comprehensive view of Student's speech and language strengths and weaknesses. She concluded that Student qualified for speech and language special education services.

MS. YAGHOBIAN AND MS. VOGT, AT

36. The AT assessment was conducted by Ms. Yaghobian and Ms. Vogt with input from Ms. Gale-Sadler. Ms. Yaghobian has a Bachelor of Arts in psychology from the University of California at Santa Cruz, and Master of Arts degrees in School Counseling from Chapman University and in Special Education from San Francisco State University. She has a pupil personnel credential, and teaching credentials in moderate to severe autism spectrum disorder, educational specialist instruction, multiple subject teaching, specialist instruction in special education, and learning handicapped. She also has an AT and an augmentative and alternative communication (AAC) certificate, a resource specialist certificate, and a Tier 1 certificate of eligibility for administrative services. She received her training working with children on the autism spectrum from a week long seminar from Autism Partnership, a three day SELPA training, and 20 years of working with students on the autism spectrum as a special education teacher, a designated instructional service counselor, and a special education services counselor. She had been with District since 2010 and had been an AT assessor for District for approximately one year, where at least 50 percent of the students she assessed were on the autism spectrum.

37. Ms. Yaghobian reviewed Student's file, including IEPs, medical reports, and various assessments. She also reviewed responses received from Parents, Ms. Vogt, and Ms. Gale-Sadler, to the AT Parent Questionnaire and the relevant sections of the Wisconsin AT Initiative (WATI) questionnaires, Section two regarding communication,

Section three regarding computer access, Section four regarding the motor aspects of writing, Section five regarding composition of written material, Section six regarding reading, and Section eight regarding organization. Student's AT assessment took four sessions, of approximately two to three hours each session. The assessors followed test instructions and protocols when assessing Student's AT needs.

38. Ms. Yaghobian reviewed reports on an AT assessment conducted by Kathleen Phillips on May 12, 2012, a neuropsychological assessment conducted by Mary Large on August 30, 2012, and a speech, language, and hearing assessment conducted by Justine Sherman on August 31, 2012. Similar to District's assessors' findings, all three assessors found Student's expressive and receptive language skills to be significantly impaired.

39. The findings in the communication, writing, and reading sections of the AT report were taken from the VB-MAPP academic assessment conducted by Ms. Vogt. The evaluation of current skills section came from information from the AT Parent Questionnaire and the WATI forms, which assessed Student's abilities and interests, especially in technology, computer, keyboard, and iPad use. The review and analysis of the information from these sources were used to generate recommendations for AT that would assist Student. For example, the VB-MAPP showed that Student understood the connection between symbols and meaning as he was able to point to the pictures or symbols represented by certain words. Mother reported that Student used an iPad, computer, and keyboard at home. This information, together with observations done as part of Student's VB-MAPP assessment, led the assessors to consider communication tools for Student such as The Picture Communication Systems, Go Talk 9, and an iPad 3 with Proloquo2Go application. The AT assessors concluded that Student required AT support and recommended the iPad with Proloquo2 application, which is an AAC application for individuals who have difficulty speaking and enabled them to talk using

symbols or typed text. Student would be able to communicate by referencing the categories and associated word banks when generating words or phrases independently became difficult. The iPad would also enable Student to access other academic applications, including a visual schedule and a book share program, which highlighted words for reading support and verbal feedback.

MR. KELLY, FUNCTIONAL BEHAVIOR ASSESSMENT (FBA)

40. The FBA assessment was conducted by Mr. Kelly. He had been a coordinator of special services for District since 2012 and, from 2010-2012, he consulted for the District in social skills curriculum and assisted in conducting FBA's. He also had experience as a special education teacher for students on the autism spectrum. Mr. Kelly has a Bachelor of Arts in psychology and pre-medicine from Johns Hopkins University and a Master of Arts in applied behavioral analysis and special education from Columbia University, Teachers College. He is a board certified behavior analyst (BCBA), a certified instructor in training classroom staff in positive behavioral interventions according to the Boys Town Classroom Model, and is working on his doctorate in education leadership from the University of Southern California. He has conducted more than 50 FBA's. He followed common instructions and protocols of conducting a FBA by looking for antecedents of the target behaviors, frequency for target behaviors, and determining consequences for target behaviors when he conducted the FBA of Student.

41. Mr. Kelly reviewed Student's records and questionnaire responses from Parents and observed Student in connection with his FBA from which he developed a behavior support plan (BSP) reflected on pages five through eight of his November 16, 2013 report. He conducted the FBA in three sessions which consisted of observing the speech and language, psycho-educational, and APE assessments of Student on October 5, 2013, October 17, 2013, and October 18, 2013, respectively. Given that Student was not enrolled in school, Mr. Kelly's observations of Student's behaviors during other

assessments most approximated Student's educational setting because Student was asked to perform tasks similar to those that would be presented in a classroom, on a playground, or during provision of individualized related services during his speech and language, psycho-educational, and APE assessments. Mr. Kelly identified Student's target behaviors based on parental concerns, Student's records and observations of Student. The identified target behaviors were physical aggression towards others, head hitting as a self-injurious behavior, and self-stimulatory behaviors. During Mr. Kelly's observations, Student demonstrated self-injurious head hitting 1.6 percent of the time, aggression towards others in the form of pinching 6.8 percent of the time, and self-stimulatory behaviors of humming, sighing, or vocalization without purpose 93.2 percent of the time. Self-injury and physical aggression occurred when difficult, multiple, and/or confusing demands were placed upon Student, indicating that such demands were the antecedents to those target behaviors. Mr. Kelly was unable to identify clear antecedents for the self-stimulatory behaviors because they occurred so frequently. Mr. Kelly suggested replacement behavior, the substitution of a socially appropriate behavior as an alternative to the targeted behavior. The replacement behavior suggested including having Student request a break when self-injury or physical aggression occurred, and conditioning Student to discontinue self-stimulatory behavior with verbal praise and rewards with tokens when such behavior did not occur, or removal of a preferred item (*e.g.* book, game), and prompt with a quiet voice when self-stimulatory behaviors occurred. Mr. Kelly provided consequence strategies for Student's self-injurious or aggressive behaviors, including positive reinforcement for a period without demands and prompts as replacement behavior. Mr. Kelly also provided consequence strategies for self-stimulatory behaviors such as rewarding and praising Student when such behaviors were not exhibited, and denying Student a preferred activity or item when they occurred.

42. Through a reinforcement assessment, Mr. Kelly identified Student's preferred activities as reading preschool to third grade level books and playing games on the iPad. Mr. Kelly was unable to perform an ecological assessment, which evaluates potential variables that trigger a behavior, such as times, activities, transitions, tasks demands, attention, and particular staff or students, because Student was not in school and potential triggers in his school setting could not be identified.

43. Mr. Kelly hypothesized that Student engaged in self-injurious behaviors to escape from demands, such as an unwanted situation or person, engaged in aggressive behaviors to attain a preferred item or activity, and engaged in self-stimulatory behaviors to attain internal reinforcement. He recommended antecedent, behavior, and consequence charting for the self-injurious and aggressive behaviors, and momentary time sampling for the self-stimulatory behaviors.

44. Mr. Kelly's November 16, 2013 report had typos and was incorrectly entitled functional analysis assessment and positive behavior intervention plan when the correct title should have been FBA and BSP, respectively. Mr. Kelly explained that the distinction between the two was not substantive in this case. Although a functional analysis assessment would have required testing the hypothesis for the function of the behavior, Mr. Kelly was unable to do so because Student was not attending school.

STUDENT'S EXPERT - MS. JUAREZ

45. Jaime Juarez, the Director of Hope, Inc., knew Student from his receipt of behavioral modification, cognitive behavioral therapy, and AT services for approximately one and a half years at Hope, Inc.'s outpatient mental facility. Ms. Juarez has a Bachelor of Arts in social work from California State University at Los Angeles, and a Master of Science in counseling. She is a licensed marriage family therapist, and has a pupil personnel counseling credential. She is also a BCBA and has a certificate for applied behavioral analysis pivotal response training, levels one and two. She has conducted

over 100 FBA's and functional analysis assessments. She was trained with the developers of the VB-MAPP to administer the test, and has administered it approximately 25 times. She was trained to administer AT/AAC assessments as a part of her applied behavioral analysis training, from continuing education classes with an AT/AAC expert, and from working on a daily basis with AT/AAC experts. She has conducted AT/AAC assessments as a part of psycho-social assessments over a hundred times. She is not a school psychologist or an educational psychologist, and is not trained to administer speech and language assessments.

46. Ms. Juarez opined that Mr. Kelly's FBA did not include a complete inventory of Student's target behaviors, which should have included Student's anxiety, social issues, ear covering, sitting still and attending, scanning, and use of AT/AAC. She felt that the failure to include the additional target behaviors rendered the FBA an incomplete depiction of Student's needs, but did not invalidate the FBA. She also opined that District's FBA, conducted when Mr. Kelly observed Student's behaviors while Student was tested in the areas of speech and language, psycho-educational, and APE, should be invalidated because it was the wrong environment for an FBA. She concluded that the appropriate environment for an FBA would be observing Student in the classroom, on the playground, or at home.

47. Ms. Juarez was trained that all five components of the VB-MAPP must be conducted for that assessment to be considered complete. She believed that the Milestones and Barriers (assesses barriers to learning) components must be administered for the VB-MAPP to be accurate. While the Task Analysis (provides breakdown of skills assessed by the Milestones) and Transition (assesses negative behaviors, social skills, academic independence, and general self-help) components could be bypassed during the assessment, and skipping those sections would render the test incomplete for making placement recommendations. She felt that the VB-MAPP

should be administered to students within the chronological age set by the test regardless of the student's developmental abilities.

48. Student's challenges to the appropriateness of District's assessments and reports included typos in reports, failure of the assessors to review and consider various past reports regarding Student which Parent deemed would provide a more complete picture of Student, failure to conduct the assessments at home and/or other places Student was receiving services such as Hope, Inc. and Loma Linda University, failure to specifically consider Student's anxiety and light sensitivity, failure to consider that another language was used in Student's home, failure to seek input from a teacher other than Ms. Vogt, and failure to observe Student's interaction with his sister.²

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA³

1. This due process hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁴; Ed. Code,

² Mr. Attwood's testimony of his own experiences as a child with special needs and his interactions with Student were not considered because it was not relevant to the issue of whether District's assessments had been properly conducted, and Mr. Attwood was not a qualified expert witness on any relevant topic.

³ Unless otherwise indicated, the legal citations in this Introduction are incorporated by reference into the analysis of each issue decided below.

⁴ All subsequent references to the Code of Federal Regulations are to the 2006 edition.

§ 56000, et seq.; and Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: 1) to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living; and 2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective, and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, and which sets forth the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d); Ed. Code, § 56032.)

3. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access

to specialized instruction and related services which are individually designed to provide educational benefit to” a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to “maximize the potential” of each special needs child “commensurate with the opportunity provided” to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to “confer some educational benefit” upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit Court of Appeals has held that despite legislative changes to special education laws since *Rowley*, to date, Congress has not changed the definition of a FAPE articulated by the Supreme Court in that case. (*J.L. v. Mercer Island School Dist.* (9th Cir. 2010) 592 F.3d 938, 950 [In enacting the IDEA 1997, Congress was presumed to be aware of the *Rowley* standard and could have expressly changed it if it desired to do so.]) Although sometimes described in Ninth Circuit cases as “educational benefit,” “some educational benefit,” or “meaningful educational benefit,” all of these phrases mean the *Rowley* standard, which should be applied to determine whether an individual child was provided a FAPE. (*Id.* at p. 950, fn. 10.)

4. The IDEA affords parents or local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6)(f) & (h); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505, 56505.1; 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. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Subject to limited exceptions, a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C) & (D); Ed. Code, § 56505, subd. (l).) At the hearing,

the party filing the complaint, in this case District, has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA due process hearings is preponderance of the evidence].)

ISSUE ONE: APPROPRIATENESS OF DISTRICT'S APE ASSESSMENT AND REPORT

5. District contends that its APE assessment and report were appropriate. Student disagrees and contends that he is entitled to a District funded APE IEE.

6. In order to assess or reassess a student, a school district must provide proper notice to the student and his or her parents. (20 U.S.C. § 1414(b)(1); Ed. Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under the IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must be understandable to the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(l)-(4).) A school district must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).) The proposed written assessment plan must contain a description of any recent assessments that were conducted, including any available independent assessments and any assessment information the parent requests to be considered, information about the student's primary language and information about the student's language proficiency. (Cal. Code Regs., tit. 5, § 3022.)

7. The assessment must be conducted in a way that: (1) uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; (2) does not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability; and (3) uses technically sound instruments that may assess the

relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The assessments used must be: (1) selected and administered so as not to be discriminatory on a racial or cultural basis; (2) provided in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; (3) used for purposes for which the assessments are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. §§ 1414(b) & (c)(5); Ed. Code, §§ 56320, subds. (a) & (b), 56381, subd. (h).) The determination of what tests are required is made based on information known at the time. (See *Vasheresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).) Assessors must be knowledgeable about the student's suspected disability and must pay attention to student's unique educational needs such as the need for specialized services, materials, and equipment. (Ed. Code, § 56320, subd. (g).)

8. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in

grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) Within 60 days of parental consent to the assessment, the assessment report must be provided to the parent (Ed. Code, § 56329, subd. (a)(3)), and an IEP team meeting must be held to consider the assessment. (Ed. Code § 56302.1, subd. (a).)

9. A student may be entitled to an IEE if he or she disagrees with an evaluation obtained by the public agency and requests an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code, § 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) In response to a request for an IEE, an educational agency must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2); see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

Analysis of Notice, Consent, and Timeliness of All Assessments

10. District demonstrated by a preponderance of the evidence that for the APE assessment in Issue One, and all other assessments in Issues Two through Seven, it complied with all required procedures regarding notice, parent consent, and timeliness. District sent Parents a proposed written assessment plan with a copy of the Parents' Rights in response to their request for an initial assessment. When Parents added additional assessments, District sent a revised assessment plan with the additional assessments and obtained Mother's signature before assessing the Student according to the revised assessment plan. Although there was confusion over which assessment plan

had been consented to, and the ambiguity might have been resolved earlier on September 6, 2013, instead of on September 19, 2013, such delay was minimal and did not constitute non-compliance under the law. Mother dated both the assessment plan and the September 4, 2013 revised assessment plan August 27, 2013 even though she did not sign, and could not have signed the September 4, 2013 revised assessment plan on August 27, 2013. It was reasonable for the District to seek confirmation, and District's September 19, 2013 e-mail was persuasive on the date the confusion regarding the scope of Parents' consent was resolved. District held its initial IEP team meeting on November 15, 2013 to provide Parents with the reports and discuss the results of all Assessments, which was within the 60 days of September 19, 2013, the date that the scope of Parents' consent was confirmed. September 19, 2013 was the appropriate date for use in calculating the 60 days District had to assess Student, and hold an initial IEP team meeting. All Assessments were properly noticed, written parental consent was obtained, and the Assessments were timely completed.

Analysis of Issue One

11. Here, District demonstrated by a preponderance of the evidence that the 2013 APE assessment was properly conducted and the resulting report was appropriate. The assessment was performed to address concerns regarding Student's object control and locomotor skills using the TGMI and Apache. Ms. Mendoza is a qualified APE assessor with the proper experience and credentials. She assessed Student with the TGMI even though the test is typically administered to 10 to 12 year olds to evaluate Student's basic skills when the Apache, which is typically administered to older students, proved too difficult for Student. The assessment was not racially or culturally biased, because it was based on observation, record review, and use of two criterion-referenced standardized tests that required Student to perform specific physical tasks. The assessment resulted in a comprehensive written report that included all observations,

assessment results, consideration of Student's PE needs at school, and a reasoned recommendation that Student qualified for APE services. While Parent's complaints regarding Ms. Mendoza's failure to assess Student's ability to run a mile, perform sit-ups and push-ups, failure to assess Student in the area of dance and aquatics, and failure to review a parent questionnaire before her assessment showed disagreement between what Parent and Ms. Mendoza thought an APE assessment needed to include, such complaints were not supported by evidence that the APE assessment was conducted inappropriately. Ms. Mendoza followed test instructions and protocols in evaluating Student, and even proposed an additional goal to address Student's basketball and soccer skills per Parent's request. Parents' complaints that Ms. Mendoza did not provide written recommendations in advance of the IEP team meeting and did not address Student's anxiety in the APE report were inconsequential to the appropriateness of the report. Specific program recommendations are not a required component of written assessment reports, and each child's program is ultimately developed by the IEP team. It was reasonable to hold off recommendations until the IEP team had an opportunity to discuss Ms. Mendoza's APE assessment findings. As to addressing Student's anxiety, that was not the function of the APE assessment, and Ms. Mendoza appropriately noted that if Student manifested anxiety in a physical education setting, it could be addressed at that time. Ms. Mendoza also properly developed proposed APE goals based on her assessment. The District's evidence was not contradicted at hearing. Based on the above, the District met its burden of demonstrating that the 2013 APE assessment was properly conducted, such that Student is not entitled to a District funded APE IEE.

ISSUE TWO: APPROPRIATENESS OF DISTRICT'S VB-MAPP ASSESSMENT AND REPORT

12. District contends that its VB-MAPP assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded VB-MAPP IEE.

13. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

Analysis of Issue Two

14. Here, District demonstrated by a preponderance of the evidence that the VB-MAPP was properly conducted to address Student's verbal behavior and related skills for placement and academic needs, and the resulting report was appropriate. Ms. Vogt is a qualified VB-MAPP assessor with the proper experience and credentials. She was the teacher who had known and worked with Student the longest. She selected the VB-MAPP as an appropriate tool to assess Student's strengths and weaknesses based on Student's present levels of performance as reflected in various reports including, IEP's, IEE's and 504 Plan goals. The assessment was not racially or culturally biased, because it was based on observation, record review, and use of standardized assessments that were validated for the specific purpose of evaluating Student's abilities based on a combination of 12 skills sets including mand, tact, echoic, intraverbal, listener responding, motor imitation, independent play, VP-MTS, linguistic structure, early academics skills, social play and group and classroom skills. However, because Parent had elected to withdraw Student from school, Ms. Vogt was unable to evaluate Student in the areas of social play and group and classroom skills in an educational setting; therefore, at hearing, Parents could not challenge the assessment on that ground. Based on the results of the VB-MAPP regarding Student's mastered skills and areas of need, Ms. Vogt prepared a comprehensive written report that included all observations,

assessment results and proposed 12 goals for the IEP team's discussion of Student's needs to access his education. It was uncontroverted at hearing that the academic assessment identified Student's present levels of performance and unique academic needs, and yielded information that was useful to the IEP team.

15. Ms. Vogt followed the test instructions and protocols in administering the VB-MAPP. Student's witness, Ms. Juarez, opined that the VB-MAPP should be administered to students within the chronological age set by the test regardless of the students' developmental abilities. Ms. Juarez's opinion was not persuasive because it was impractical as to this Student. It would be impossible to evaluate Student if a test for younger students were not used because Student's developmental abilities were far below that of a typical student of his chronological age, and using a test of Student's chronological age would be too advanced for Student. Ms. Juarez also shared that she was trained that all five components of the VB-MAPP must be conducted for the assessment to be complete and that bypassing certain components would render the VB-MAPP incomplete in making placement recommendations. The skills measured by the Barriers, Transition, and Task Analysis and Skills Tracking components of the VB-MAPP were not bypassed, but addressed instead by District's psycho-educational, speech and language, and FBA assessments of Student. Ms. Juarez is not a school psychologist or an educational psychologist, and also did not opine on whether the Milestones and Placement and IEP Goals components of the VB-MAPP in conjunction with the results of all of the other Assessments would provide a complete picture for Student's placement recommendation. While Ms. Juarez was trained in administering the VB-MAPP, she had administered the VB-MAPP approximately 20 times, significantly fewer times than Ms. Vogt, who had administered the VB-MAPP approximately 120 times. Therefore, Ms. Vogt's testimony on the VB-MAPP carried more weight. Neither Ms. Juarez's testimony, nor other evidence offered by Student rebutted District's

evidence that the VB-MAPP assessment and report, in conjunction with the totality of other Assessments, provided a complete picture of Students needs and were appropriate. Based on the above, the District met its burden of demonstrating that the 2013 VB-MAPP assessment was properly conducted, such that Student is not entitled to a District funded IEE in the areas covered by the VB-MAPP.

ISSUE THREE: APPROPRIATENESS OF DISTRICT'S PSYCHO-EDUCATIONAL ASSESSMENT AND REPORT

16. District contends that its psycho-educational assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded psycho-educational IEE.

17. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

Analysis of Issue Three

18. Here, District demonstrated by a preponderance of the evidence that the 2013 psycho-educational assessment was properly conducted and the resulting report was appropriate. The assessment was performed to address Student's intellectual, processing, and social/emotional needs in relation to accessing his education. Ms. Knipscheer was an experienced and licensed school psychologist qualified to perform the assessment. The assessment was not racially or culturally biased. Ms. Knipscheer used a variety of tools to assess Student including standardized tests such as the KBIT-2, Beery VMI, TVPS-3, questionnaires such as the BASC-2, SRS and ABAS-II to be completed by Parents and Ms. Vogt, regarding their observations of Student, her own observations, and records review. Additionally, she relied on Ms. Vogt's academic assessment and Ms. Gale-Sadler's language, speech, and hearing assessment as a part of her psycho-educational report. The assessment resulted in a comprehensive written

report that included all observations, assessment results, consideration of Student's cognitive abilities, visual-motor abilities, visual-perceptual abilities, visual memory abilities, academic difficulties, adaptive skills, daily functional abilities, behavior problems, and vocational interests, along with a reasoned conclusion that Student qualified for special education services under the categories of autistic-like behaviors and intellectual disability. The individual test results consistently supported that Student exhibited an inability to use oral language for appropriate communication, had needs in relating to people appropriately, demonstrated below average intelligence function, and exhibited deficits in adaptive behavior which adversely affected Student's educational performance. The psycho-educational assessment yielded information about Student that was useful and sufficient for the IEP team to develop a program for Student.

19. Parents' displeasure with the location where Student was tested did not support their contention that the psycho-educational assessment was incomplete or inappropriate. Parents could not dictate that Student be tested in the home, at Hope, Inc., or other parent-preferred, non-school environments. District tested Student at District's trailer, which was the closest to a classroom setting that could be achieved because Student was not attending school. Parents deprived District of the opportunity to assess Student in the areas of social skills, group skills, and classroom skills when they withdrew Student from school, and therefore it was reasonable for District to perform the assessments in a location that approximated a school setting. Parents' complaints that the report was missing a more recent teacher's observations, a recitation that Student experienced retention and trauma in previous years, and that Parents requested home hospital instruction, did not render the assessment invalid, because, as discussed above, the assessment met all requirements for an appropriate assessment. Based on the above, the District met its burden of demonstrating that the 2013 psycho-

educational assessment was properly conducted, such that Student is not entitled to a District funded psycho-educational IEE.

ISSUE FOUR: APPROPRIATENESS OF DISTRICT'S HEALTH UPDATE ASSESSMENT AND REPORT

20. District contends that its health update assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded health IEE.

21. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

Analysis of Issue Four

22. Here, District demonstrated by a preponderance of the evidence that the health update was properly conducted and the resulting report was appropriate. The assessment was performed to address Student's health and medical needs at school. Ms. Hone-Warren is a qualified nurse with the proper experience and credentials. She reviewed Student's records and interviewed Mother for the health update. Ms. Hone-Warren concluded that the information reported by Mother appeared consistent with her records review. Ms. Hone-Warren requested a meeting with both Mother and Student, which Mother declined. Instead, Mother opted for a phone interview where Mother provided information regarding Student's personal hygiene, nutrition, medication, health status and variety of concerns. Thus, Mother's later complaint at hearing that the assessment was inappropriate because District failed to meet with Student was unpersuasive. Further, Ms. Hone-Warren was not required to examine Student for purposes of the health update when there was no evidence that Student required any specialized health care procedures or medication administration at school. Likewise, given that the purpose of the assessment was to determine if Student had

health or medical needs that needed to be included in an IEP, the non-inclusion of Ms. Hone-Warren's nurse license number on the report and minor mistakes regarding Student's school attendance dates did not demonstrate that the assessment was inappropriately conducted.

23. The assessment resulted in a comprehensive written report that Student was at a healthy weight and did not require any specialized health care procedures, medication administration, or mobility equipment at school. The District's evidence was not contradicted at hearing. Based on the above, the District met its burden of demonstrating that the 2013 health update assessment was properly conducted, such that Student is not entitled to a District funded IEE in this area.

ISSUE FIVE: APPROPRIATENESS OF DISTRICT'S LANGUAGE, SPEECH AND HEARING ASSESSMENT AND REPORT

24. District contends that its language, speech and hearing assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded IEE in the areas of language, speech, and hearing.

25. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

Analysis of Issue Five

26. Here, District demonstrated by a preponderance of the evidence that the 2013 language, speech, and hearing assessment were properly conducted and the resulting report was appropriate. The assessment was performed to address concerns regarding Student's language, speech, and hearing needs for purposes of his education. Ms. Gale-Sadler was a qualified assessor with the proper experience and speech and language pathologist credentials. The assessment was not racially or culturally biased. The assessment was based on observation, record review, standardized tests, informal

assessments and conversation. Ms. Gale-Sadler also attempted to assess Student's hearing, but was unsuccessful because Student could not comprehend the task of raising his hand when he heard a sound because of the limitations of his autism and intellectual disability, not because of limited hearing. Mother equated the "unable to train to task" statement in the report to mean that Ms. Gale-Sadler had conducted an inadequate hearing assessment and believed that Student should be assessed for CAPD, which Ms. Gale-Sadler did not do because the evidence did not support that Student was hearing impaired or had a CAPD. Ms. Gale-Sadler's finding that Student was not hearing impaired was persuasive because the evidence supported that Student was able to hear, respond and follow simple instructions during other portions of the hearing assessment and during District's other assessments. The assessment resulted in a comprehensive written report that included all observations, assessment results, consideration of Student's present levels of performance, and identified Student's unique speech and language needs, and a reasoned recommendation that Student qualified for special education services in speech and language. Ms. Gale-Sadler also noted that Student could benefit from AT use and provided input to the AT assessors in their assessment.

27. Mother's other complaints regarding Ms. Gale-Sadler's failure to observe Student at home interacting with familiar adults and to consider Konkani as another language spoken at home were inconsequential to the appropriateness of the assessment. District was not required to observe or assess Student at home, or in a parent-preferred environment, as Student's abilities and needs for developing an IEP would be better understood if Student were observed and assessed with non-familiar adults. As to the fact that a second language was spoken in the home, the IDEA only requires that assessments be conducted in the student's primary language. The evidence established Student was properly assessed in English, his primary language.

28. In sum, the evidence showed District's speech and language assessment met all criteria for an appropriate assessment. Based on the above, the District met its burden of demonstrating that the 2013 language, speech and hearing assessment was properly conducted, such that Student is not entitled to a District funded IEE in this area.

ISSUE SIX: APPROPRIATENESS OF DISTRICT'S AT ASSESSMENT AND REPORT

29. District contends that its AT assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded IEE in this area.

30. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

Analysis of Issue Six

31. Here, District demonstrated by a preponderance of the evidence that the 2013 AT assessment was properly conducted and the resulting report was appropriate. The assessment was performed to address whether available technology would assist Student in communicating his wants and needs, and in interacting with others. Ms. Yaghobian and Ms. Vogt were qualified AT assessors with the proper experience and credentials. The assessment was based on observation, record review, and use of questionnaires the assessors found appropriate for assessing Student. The assessment resulted in a comprehensive written report that included all observations, assessment results, consideration of Student's AT needs, and a reasoned recommendation that Student qualified for AT services. The assessment yielded specific recommendations about the use of the iPad with communication and academic applications. The collaboration of Ms. Yaghobian and Ms. Vogt, with input from Ms. Gale-Sadler, provided a comprehensive picture of how Student would receive educational benefit from the use of AT. The District's findings were consistent with other 2012 IEE's referenced by Mother regarding Student's speech, language and AT needs. The District's evidence was not

contradicted at hearing. Based on the above, the District met its burden of demonstrating that the 2013 AT assessment was properly conducted, such that Student is not entitled to a District funded AT IEE.

ISSUE SEVEN: APPROPRIATENESS OF DISTRICT'S FUNCTIONAL ANALYSIS ASSESSMENT AND REPORT

32. District contends that its functional analysis assessment and report were appropriate. Student disagrees and contends he is entitled to a District funded IEE in this area.

33. Legal Conclusions one through four, and six through 10 above, are incorporated by reference.

34. California law defines behavior interventions as the "systematic implementation of procedures that result in lasting positive changes in the individual's behavior." (Cal. Code Regs., tit. 5, § 3001, subd. (e).) Behavior interventions include the "design, implementation, and evaluation of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual's right to placement in the least restrictive environment as outlined in the individual's IEP." (Cal. Code Regs., tit. 5, § 3001, subd. (e).) Behavior intervention is the implementation of procedures to produce lasting positive changes in the student's behavior, and includes the design, evaluation, implementation, and modification of the student's individual or group instruction or environment, including behavioral instruction, to produce significant improvement in the student's behavior. In the case of a child whose behavior impedes his or her learning or that of others, the IEP team must consider, when appropriate, "strategies, including positive behavioral interventions, strategies, and supports to address that behavior." (20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R. §

300.324; Ed. Code, § 56341.1, subd. (b)(1).) This type of behavior intervention is referred to as a BSP in California, although there is no statute or regulation that uses that term.

35. In 1990, California passed Education Code section 56520, et seq., which was commonly known as the Hughes Bill, concerning behavior interventions for pupils with serious behavior problems. Regulations implementing the Hughes Bill required that a local educational agency conduct a functional analysis assessment, resulting in a behavior intervention plan (BIP), when a student exhibited a “serious behavior problem,” and the IEP team found that the instructional/behavioral approaches specified in the student’s IEP had been ineffective. (Cal. Code Regs., tit. 5, §§ 3001, subds. (d), (e), and (g).) Effective July 1, 2013, the Hughes Bill was repealed upon the passing of Assembly Bill 86 (AB 86). Under AB 86, an educational agency is no longer required to conduct a functional analysis assessment or create a BIP for students exhibiting “serious behavior problems.” Instead, the educational agency must follow the IDEA which provides that IEP teams must address behavior when it impedes a student’s or other students’ access to education. (Ed. Code, § 56520, amended.) A person recognized by the National Behavior Analyst Certification Board as a BCBA may, but is not required to, conduct behavior assessments and provide behavior intervention services for individuals with exceptional needs. (Ed. Code, § 56525, subds. (a) and (b), amended.)

Analysis of Issue Seven

36. Here, District demonstrated by a preponderance of the evidence that the 2013 FBA was properly conducted and the resulting report was appropriate. The assessment was performed to address concerns regarding Student’s behavioral needs. Mr. Kelly is a BCBA, with the proper experience and credentials to conduct an FBA. The assessment occurred in November 2013, after the repeal of the Hughes Bill. Therefore, at the time of the assessment, even though a BCBA was not required by law, District’s assessment was conducted by one. Further, the differences between a functional

analysis assessment and an FBA were inconsequential given that Student's behaviors were addressed by Mr. Kelly's FBA and proposed BSP. Since Parent withdrew Student from school, Mr. Kelly observed Student during the speech and language, psycho-educational, and APE assessments, the closest to an academic and school environment available. Mr. Kelly properly identified the three overriding target behaviors as reported by Parents and as appearing in previous IEPs. Although Ms. Juarez believed that Mr. Kelly's assessment should have included a more complete inventory of Student's target behaviors, she agreed that the failure to include these additional behaviors did not invalidate the FBA. The assessment was based on observation, record review, and use of a parent questionnaire from which a BSP was formulated. The assessment resulted in a comprehensive written report that included all observations, assessment results, consideration of Student's behavioral needs at school, and a reasoned recommendation which included an analysis of Student's antecedent, behavior, and consequence charting for each of the target behaviors observed in the closest to an academic/school environment.

37. Despite a number of typos and mistakes in Mr. Kelly's report, the behavior assessment and report substantively met all requirements. Mother complained that Student should have been assessed at Hope, Inc., at home, or while Student interacted with his sister. Ms. Juarez concluded that District's FBA should be invalidated because it was conducted during testing, instead of in a classroom, on the playground, or at home. Here, District was evaluating Student to identify behaviors that were preventing him from accessing his education at school. Observing Student's behaviors at home, while helpful, was not required for identifying behaviors which impeded his education at school. While Ms. Juarez's conclusion that an FBA should be conducted at home might be true if the purpose of the assessment was to address maladaptive behaviors there, her opinion was unpersuasive as it did not apply to FBA's for purpose of identifying

inappropriate behaviors that manifest in a school setting. Parents' withdrawal of Student from school effectively deprived District of an appropriate FBA location for evaluating Student's behaviors in a familiar classroom setting, and the assessment was properly conducted in an environment that reasonably approximated the classroom environment.

38. Based on the above, the District met its burden of demonstrating that the 2013 behavior assessment was properly conducted, such that Student is not entitled to a District funded FBA IEE.

ORDER

1. District's 2013 assessments and reports in the areas of APE; VB-MAPP; psycho-educational; health update; language, speech and hearing; AT; and functional behavior were appropriately completed.

2. District is not required to fund IEE's of any assessment areas at issue in this hearing.

PREVAILING PARTY

Pursuant to 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. Here, District was the prevailing party on all issues.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: April 22, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings