

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARAMOUNT UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013070575

DECISION

Paramount Unified High School District (District) filed a Due Process Request on July 12, 2013. On July 31, 2013, the matter was continued at the District's request.

Clifford H. Woosley, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter in Paramount, California, on November 12, 13, 14, and December 5, 2013.

Attorney Angela Gordon represented District. Special Education Director Kimberly Cole and Program Administrator Kathleen Cotter attended on behalf of District.

Special education advocate Kim McClain appeared on Student's behalf. Student's Mother was present throughout the hearing.

On December 5, 2013, at the close of hearing, the matter was continued to December 20, 2013, for the parties to file written closing arguments. On December 13, 2013, upon receipt of the written closing arguments, the record was closed and the matter submitted.

ISSUES

1. Whether the District's triennial psychoeducational assessment of Student

was appropriate such that Student is not entitled to an independent educational evaluation (IEE) at public expense.

2. Whether the District's triennial speech and language (SAL) assessment of Student was appropriate such that Student is not entitled to an IEE at public expense.

3. Whether the District's triennial occupational therapy (OT) assessment of Student was appropriate such that Student is not entitled to an IEE at public expense.

SUMMARY OF DECISION

District met its burden of proof on all three issues by showing the assessments were administered by trained and knowledgeable personnel, used a variety of appropriate technically sound, valid, and reliable instruments, tools and strategies, and met all legal requirements. Accordingly, Student is not entitled to a psychoeducational, SAL, or OT IEE at public expense.

FACTUAL FINDINGS

1. Student was a seven-year-old second grader who attended a general education class at Lincoln Elementary School, with designated instructional services (DIS) that included a resource specialist, SAL therapy, counseling, a "temporary intervenor" (aide), and OT consultation. He was eligible for special education placement and related services as a student with autistic-like behaviors. Student has a secondary eligibility of SAL impairment and was diagnosed with pervasive developmental disorder not otherwise specified (PDD-NOS), attention deficit hyperactivity disorder (ADHD), and asthma. He took medications associated with his ADHD and uses an inhaler, as needed. At all times relevant to this due process complaint, Student lived within the District's boundaries.

2. Pursuant to an assessment plan provided by District and executed by Parent, District timely assessed Student for his triennial individualized education

program (IEP) team meeting, which commenced in February 2013. Student was assessed in the following areas: Academic and Pre-Academic Achievement; SAL; Intellectual Development; Social/Emotional/Adaptive Behaviors; Perception/Processing; Health and Physical Status; and Gross/Fine Motor Development. Also, pursuant to a subsequent and separately executed assessment plan, District conducted a functional behavior assessment at Mother's request.

3. The triennial IEP team met on February 6, March 26, and June 4, 2013. Mother did not consent to the triennial IEP. On June 10, 2013, Mother informed District that she disagreed with District's psychoeducational (including social emotional functioning), SAL, and OT assessments. Mother requested that District fund IEE's for these three assessments. District timely responded in writing, stating that the three assessments were valid, had met all legal requirements for sufficient assessments, and were otherwise legally appropriate. District denied Student's request for IEE's at public expense and thereafter timely filed this due process request to establish that the assessments were legally appropriate.

THE JANUARY 23, 2013 TRIENNIAL PSYCHOEDUCATIONAL ASSESSMENT¹

4. District's school psychologist, Timothy Day, was primarily responsible for the triennial psychoeducational assessment, while collaborating with the other team members, resource specialist Grace Torres, District nurse Danielle Sawyer, and school

¹ The District prepared a Multidisciplinary Team Report, dated January 23, 2013, which included the triennial SAL assessment. The SAL assessment is separately addressed in this decision. The remaining portion of the team report is referred to as the psychoeducational assessment.

counselor Shannon Patterson Culley.² Mr. Day testified at the hearing. He had a bachelor of arts degree in psychology from California State University, Fullerton, and a master of arts in psychology from Pepperdine University. He received his Pupil Personnel Services (PPS) Credential in School Psychology from National University, where he completed the requisite program curriculum, as well as a 3000-hour internship. He was also a board certified school neuropsychology diplomat with the American Board of School Neuropsychology, LLC. He participated in continuing education, largely in association with his school neuropsychology. As a credentialed school psychologist, he was qualified to provide assessments at the school, evaluating cognition, intellectual abilities, processing, and social and adaptive functions.

5. Mr. Day was a school psychologist with the District since 2007 and was a District program specialist in 2006. From 2003 to 2006, he was a program supervisor for Early Behavior Intervention, LLC and, from 2002 to 2003, a counselor at Harbor Regional Center. Mr. Day was also an intake and assessment coordinator at Regional Center of Orange County from 2000 to 2002.

6. During his seven years as a District school psychologist, he performed more than 300 assessments; approximately 50 to 60 assessments per year. He was on numerous IEP teams, sometimes serving as the administrative designee when not the assessor. He also served as a general resource for teachers and families to assist in addressing behaviors and building structural programs within the classroom. Mr. Day's education, training, and experience qualified him to knowledgeably testify as an expert regarding Student. He remained calm and focused, even when challenged during cross-examination.

² Meggan Haesche was mistakenly listed on the report; she did not participate.

7. Mr. Day did not know Student before starting the triennial assessments. At the time, Student's suspected areas of disability were other health impaired (OHI), related to ADHD, and autistic-like behavior. Mr. Day did not review Student's records until after he completed his assessments. He used this method to assure that his impressions and assessments were not influenced by other factors. Though not typical, this approach was within the standards of practice for a psychoeducational assessment.

8. One of the purposes of the triennial assessment was to determine Student's continued eligibility for special education placement and services. Mr. Day sought to identify the eligibility for which Student qualified, using various standardized and informal instruments, as well as personal interviews and observation. He and his team assessed in all areas of suspected disability. Mr. Day was responsible for assembling the final written report.

9. The District's psychoeducational assessment utilized the following instruments: Woodcock-Johnson Test of Achievement - Third Edition (WJ-III-Ach); Brigance Comprehensive Inventory of Basic Skills II (Standardized) Readiness Assessments (Brigance II); Woodcock-Johnson Test of Cognitive Abilities, Third Edition (WJ-III-Cog); Motor Free Visual Perceptual Test, Revised (MVPT-R); Test of Auditory Perceptual Skills, Third Edition (TAPS-3); Bender Visual-Motor Gestalt Test, Second Edition (Bender Gestalt-2); Koppitz Developmental Scoring System for the Bender-Gestalt Test, Second Edition (Koppitz-2); Test of Visual Perceptual Skills, Third Edition (TVPS-3); Gilliam Autism Rating Scales, Second Edition (GARS-2); Behavior Assessment System for Children, Second Edition (BASC-2); Conners 3rd Edition (Conners 3); and Social Skills Improvement System (SSIS).³

³ The report listed other standardized instruments that were utilized in the speech assessment, which is separately discussed below.

10. Mr. Day used the most current version of all assessment instruments when he administered them to Student. All instruments were administered in English, which was Student's primary language. All instruments were reliable and widely accepted assessment tools. The instruments were not racially, culturally, or sexually discriminatory. All instruments were administered and interpreted consistent with the publisher's protocols and yielded valid results.

11. Mr. Day conducted a thorough record review and summarized Student's educational history in the report. The psychoeducational assessment report discussed each of Student's prior assessments and IEP's, noting that Mother had not signed and agreed to an IEP since November 2011.

Health

12. Student had no health concerns at the time of the report, other than the diagnosis of asthma, ADHD, and PDD-NOS. He passed the vision and hearing tests, did not require corrective lenses, and needed no assistance with his daily living activities at school. Student was on a two-hour toileting schedule to prevent accidents; otherwise, Student did not need any health-related restrictions or accommodations during school.

School Psychologist Observation

13. Mr. Day interviewed Mother and observed Student on three different occasions. At 8:30 a.m., January 7, 2013, Mr. Day observed Student participate in a language arts assignment, while sitting in his desk near the front of his classroom. Student was engaged in the task, did not display any disruptive behaviors, and completed his written work while resting his head on his left arm, as if tired. Student remained quiet and focused for 30 minutes. When asked to accompany Mr. Day for assessment, Student walked with Mr. Day to the office without hesitation. When informed that he would be completing a number of tasks, Student responded "okay."

14. At recess, Mr. Day observed Student run about the playground playing tag with three other boys. Student laughed with and chased after his friends for the entire period. At the end of recess, when asked to return to the assessment room, Student did so while smiling.

15. During assessment, Student engaged in conversation and provided appropriate eye contact. He gave focused effort for approximately 25 minutes and, when provided a break, asked for pen and paper so he could draw a dragon. When done drawing, and asked to again participate in the assessment tasks, Student put his pen down and followed all directions without resistance. After another approximate 25 minutes, Student asked for another break. When Student was allowed to return to class, he smiled and jogged to his class. As he ran up the ramp near his class, Student performed a cartwheel, smiled at Mr. Day, and walked into class.

16. On January 10, 2013, Mr. Day observed Student at home at about 6:00 p.m. Student saw Mr. Day as he entered the home and playfully crawled on all fours to his room. He emerged several minutes later, walked to the nearby computer, and played a game. Student answered questions, with appropriate eye contact; he did not appear anxious or upset that Mr. Day was in his home.

17. On January 22, 2013, Mr. Day asked Student to come with him to complete the assessments. Student laughed and walked to the office, talking about his new haircut and a favorite game. At the conclusion of the assessments, Mr. Day gave Student a pencil as a reward for his effort. Student thanked Mr. Day and asked if he was going to be coming back because Student had a lot of fun. Student returned to class, waving good-bye to Mr. Day as he entered the classroom.

Cognitive Ability

18. The WJ-III-Cog was a comprehensive set of individually administered tests that measure cognitive ability. Mr. Day chose the WJ-III-Cog to measure Student's

cognitive ability because of its reliability and wide acceptance as an assessment tool. He also chose the WJ-III-Cog because it directly correlated to the norms of the WJ-III-Ach, which Ms. Torres administered to Student. This correlation provided reliable and useful results. Mr. Day properly and accurately stated the test results, and their meaning, in the psychoeducational assessment report.

19. Mr. Day was extensively trained, as both a school psychologist and a school neuropsychologist, in the administration of the WJ-III-Cog, which he personally gave to Student. He knew and followed the publisher's instructions; he did not deviate from the instructions in administering, scoring, or interpreting Student's WJ-III-Cog. Mr. Day's testimony demonstrated a detailed knowledge of the WJ-III-Cog test administration protocols, especially in response to challenging questions from Student's advocate regarding specific subtests. His knowledgeable responses were credible and persuasive.

20. Mr. Day cautioned that intelligence tests measured only a portion of the competencies involved with human intelligence. The intelligence instruments typically consisted of subtests measuring various qualities, such as factual knowledge, short-term memory, abstract reasoning, and visual-spatial abilities. The WJ-III-Cog test battery assessed Student's general intellectual ability (GIA) and specific cognitive abilities in seven broad areas of processing.

21. In Verbal Comprehension (object identification, semantic matching, and verbal reasoning), Visual-Auditory Learning (associative learning and retrieval), Spatial Relations (visualization of spatial relationships), Sound Blending (phonemic synthesis), Visual Matching (visual perceptual speed), and Number Reversed (working memory), Student's scores were in the average range. Student's phonemic awareness and working memory scores were in the average range when compared to others his age.

22. Student scored in the high average range when compared to others at his age level in Concept Formation, which was a test of fluid reasoning. The test required Student to use categorical thinking. Mr. Day reported the superior scores, noting that Student's inductive reasoning was advanced and that Student would probably find age-level tasks involving rule-based categorization very easy.

23. On Subtest 1, verbal comprehension, the basal was three and the ceiling was three for subsection B.⁴ Mr. Day started with item three, but Student did not answer correctly. Consequently, Mr. Day went backward; Student got items one and two correct; Student could not attain the basal of three correctly. This was the proper means of test administration when a pupil misses the basal starting item. Mr. Day then continued with asking the items until Student attained the ceiling of three consecutive wrong answers. Therefore, Subtest 1 was properly administered and yielded valid results.

24. On Subtest 4, sound blending, the ceiling was six; the test page shows that Mr. Day marked five incorrect and then stopped. The sound blending test required the playing of an audiotape, which blended the sounds for Student. He explained that when Student answered the sixth item incorrectly, he turned to shut off the recording and

⁴ When an assessment test lists items or questions of increasing difficulty, basal and ceiling rules act to enhance the efficiency of the test process by administering only the range of items required to obtain an accurate estimate of the individual's ability. The test's "basal" is the starting point, or the level of mastery of a task below which the student would correctly answer all items on a test. The basal is often determined by a student's age. The test's "ceiling" is the point where the student has made a predetermined number of errors; administering remaining items stop because it is assumed that the student would continue to get the answers wrong.

neglected to mark the last, sixth, incorrect response. This did not affect the test outcome. Therefore, Subtest 4 was properly administered and yielded valid results.

25. Mr. Day testified that none of the subtests were optional. When challenged as to why Subtest 1, visual matching 1, was blank, he patiently explained that the proper Subtest 1 was visual matching 2, which Student completed. Visual matching 1 was a designed for pupils younger than Student. Similarly, when asked why he did not give Student Subtest 10, visual-auditory learning-delayed, he explained the subtest was not to be administered unless Student got through the all of Test 2, visual-auditory learning. However, Student only got through item 6 of Subtest 2, not completing item 7. Therefore, Student was not administered Subtest 10, consistent with the instructions and the computer scoring program. Finally, he was challenge for failing to administer Subtests 11 and 12; he explained, however, that they were part of the extended battery of WJ-III-Cog. Mr. Day did not administer the extended battery of subtests, which were not required, because Student performed within acceptable ranges on the standard battery. This was consistent with the publisher's protocols.

26. The WJ-III-Cog measured Student's overall intellectual ability to be in the average range for others his age, with a true GIA score in the range of 104 to 109. Mr. Day emphasized that Student's cognitive ability was not an issue of concern.

Academic Assessment

27. Ms. Torres conducted the academic assessment portion of the triennial psychoeducational report. Ms. Torres testified at the hearing. She obtained a bachelor of arts in liberal studies from California State University, Long Beach in 1991, and a master of arts in special education (mild/moderate) in 1993. She held a multiple subject teaching credential, an educational specialist instruction credential, and a bilingual, cross-cultural, language, and academic development certificate. In 2012, she obtained additional authorization in autism spectrum disorder (ASD).

28. Ms. Torres was a special education teacher in the resource specialist program (RSP) at District's Lincoln Elementary School for four years. Before Lincoln, she was a resource specialist at District's Keppel Elementary School for 17 years. Previously, she was a District elementary school teacher in primary language instruction. She had worked for the District for more than 21 years, including 17 years in special education.

29. Ms. Torres' resource specialist duties included direct academic instruction on a one-to-one or small group setting for learning disabled pupils, including those with ASD. She assisted parents of learning disabled, monitored pupil progress, participated in developing and revising IEP's, and evaluated students. Ms. Torres coordinated assessment referral and procedures, individualized instruction with regular classroom curriculum, and instructional planning. She formally assessed between 350 and 400 students. She has assessed more than 100 pupils who had ADHD and more than 50 pupils with ASD. Her education, training, credentials, and experience qualified Ms. Torres to administer and interpret the cognitive instruments, as well as knowledgeably participate as a member of the triennial psychoeducational assessment team.

30. Ms. Torres had known Student since he was in kindergarten, having personally provided him with resource services pursuant to his IEP. At the time she assessed Student for the triennial, she believed Student's suspected disabilities were ASD, ADHD, and SAL. Before assessment, she reviewed Student's cumulative and special education files, including state testing and grade reports, since pre-school.

31. Based on her review of records, personal knowledge of Student, and consultation with other team members, Ms. Torres chose the Brigance II and the WJ-III-Ach as appropriate instruments for academic assessment. Student had no other areas of academic performance which were not addressed in her assessments. Ms. Torres was trained and experienced in both instruments. She utilized the entire and most current version of each instrument, which had been validated and used for their designed

purposes. The tests were administered in English, Student's only language, and were nondiscriminatory. Ms. Torres followed and did not deviate from the publishers' instructions.

32. Ms. Torres observed Student, on three different days. On the morning of November 28, 2012, she saw Student in his classroom; he was distracted from taking out his math packet because of the broken tip on his pencil. He talked to other pupils while retrieving another pencil, requiring redirection from his aide. Student returned to his desk, retrieved his math packet, and started his assignment. The aide remained behind Student for about a minute and then walked away; Student continued to work on his own. The teacher stood next to Student and complimented him on the way he was performing. She announced there were three minutes left to complete the assignment; Student timely finished.

33. On the morning of December 6, 2012, Ms. Torres again observed Student in the classroom. Student was not working, although the math assignment was on his desk. The aide approached Student and prompted him. Student started to work but he was behind the others. Ms. Torres saw Student use a counting strategy, tapping his head and employing his fingers, on the math assignment. The aide observed but did not interfere. Student continued to work until teacher called time. The teacher then held a spelling quiz. The teacher said the word and Student would then write the word. The class self-checked their work with teacher; Student got six out of 10 correct. The teacher complimented Student. Later, with minimal prompting to begin, Student completed the 10 remaining problems for his math page on his own.

34. In the afternoon, Ms. Torres observed Student participate with his classmates in a presentation by an artist in residence, which focused on drama or acting. Student raised his hand to answer questions, courteously listened to other pupils when Student was not called, clapped to support his classmate's performance, accurately

mirrored the artist's "silent motion" exercise, followed other pupils who were asked to lead, and expressed support for other classmates performances. Student smiled and laughed appropriately, with the other students, throughout the exercise.

35. On January 22, 2013, Ms. Torres observed Student having lunch in the cafeteria. Student retrieved his milk, ate the lunch he brought from home while talking to others, cleaned up after eating, and disposed of his trash in the proper bin. He exited and got in line with the other students, who were led to the playground. Student smiled, laughed, and climbed on the monkey bars with others, as well as playing other games on the yard. When the whistle blew, signaling the end of free time, Student ran and got in line to return to the classroom.

36. Ms. Torres observed Student to follow instructions, deal well with routine, and complete tasks, but was not always timely. Student would also learn and engage with lessons that were not typical.

37. Ms. Torres administered the Brigance II, Readiness Assessments, on December 3, 4, 7, and 11, 2012. Student worked for 30-minute intervals, without breaks. Throughout the testing, he would stop and comment on something prompted by a test item. After listening, Ms. Torres would redirect Student back to the task. Student was confident with most tasks, because they were familiar and not challenging to him. He needed only two prompts and encouragement to complete writing the alphabet in sequence. He was cooperative throughout the testing and demonstrated good strategies and work habits.

38. The Brigance II assessment had six composites: general knowledge and language; gross-motor skills; graphomotor and writing skills; reading skills; math; and phonemic awareness. Ms. Torres reported Student's performance for each composite index, appropriately noting areas where Student excelled and those where he struggled. Student was six years, one month old at time of testing. Student's overall score for

general knowledge and language was in the high average range, when compared to other students of his age. Ms. Torres referred to Student's speech evaluation for a complete description of Student's SAL skills.

39. Ms. Torres outlined the gross-motor testing, reporting that Student's overall performance was in the below average range when compared to other same-aged children. Student performed all tasks with ease, running and galloping. He performed four of six different walking steps. He was unable to walk backwards heel-to-toe for more than six steps. His age equivalency performance placed him at five years, four months.

40. When reporting Student's graphomotor and writing skills, Ms. Torres detailed Student's performance on various subtest tasks. In writing, she noted that Student sometimes reversed letters; however, poor letter formation and reversal were not counted against him per Brigance scoring instructions. Student's graphomotor and writing skills score was in the above average range. Ms. Torres referred to the OT evaluation for a description of Student's fine motor skills.

41. In reading, Student was able to visually discriminate forms, uppercase and lowercase letters, and words, and recite the alphabet with ease. His readiness for reading, oral expression, math, and phonemic awareness were administered and scored in the average or above average range. Ms. Torres listed the scores for each cluster index in a table, which summarized Student's performance on the Brigance II.

42. Ms. Torres administered the WJ-III-Ach, on January 9, 10, and 11, 2013. Student's conversational proficiency during testing was age appropriate and at grade level. Student was at times uncooperative and distracted. Ms. Torres provided five-minute breaks after the completion of three subtests, unless the subtest required more time and writing. Student was allowed to stand up and check off the completion on a white board, signaling the beginning of a break. She noted various strategies used by

Student during the testing. Student demonstrated more attention issues and avoidance behaviors in the WJ-III-Ach than the Brigance II. Ms. Torres reported that this was likely because of the rigor and scope of the WJ-III-Ach. She provided examples of Student's avoidance conduct.

43. The WJ-III-Ach used multiple subtests and measured various aspects of Student's scholastic achievement. The standard battery of subtests were scored individually and also used to produce three clusters or indexes, in reading, broad math, and broad written language. Ms. Torres properly reported that normative data was unavailable for two subtests, reading fluency and editing; accordingly, these scores were not reported.

44. Student's oral language skills were average as demonstrated by performance on story recall, understanding directions, picture vocabulary, and oral comprehension, which evaluated his linguistic competency, listening ability, and comprehension. His performance on story recall and picture vocabulary subtests demonstrated Student had average oral expression skills. Ms. Torres referred to the SAL evaluation for more detailed description of Student's oral language skills.

45. The broad reading cluster provided a comprehensive measure of reading achievement, including decoding, speed, and comprehension of connected discourse while reading. Student's basic reading skills were in the average range of those pupils of his age and grade. Ms. Torres reported Student's performance on the cluster's subtests, noting that his reading comprehension skills were in the low average range. The reading fluency subtest was not administered because Student was unable to complete the practice exercise independently; this was protocol compliant. Ms. Torres stated that reporting the broad reading cluster score, though Student did not complete the reading fluency subtest, was consistent with the test instruction manual. She properly reported

that the reading fluency score was unavailable. Ms. Torres testified that Student's broad reading ability enabled Student to access and academically achieve in the first grade.

46. During testimony, she acknowledged that Student's Subtest 12 score for story recall-delayed was extraordinary, showing Student performing at a graduate school level, with an age equivalency of more than 29 years. Ms. Torres reviewed the test page and Student's responses during her testimony. Ms. Torres did not agree with Student's advocate's assertion that the subtest results were invalid. The test was administered in accordance with the instructions and the results were those of Student. The scoring was based on the stories Ms. Torres read to Student and his responses were what he recalled of the story, after a delay and being given a specified prompt. Student exhibited an ability to remember almost everything about a story. Student also exhibited this recall ability in other areas of testing. Other than administering the test in accordance with directions, and accurately entering the results into WJ-III-Ach scoring software, Ms. Torres had no control over the scoring outcome. The computer scoring software produced the reported results of standard score, percentile, age equivalent, and grade equivalent for each subtest and cluster index.

47. The broad math cluster provided a comprehensive measure of Student's math achievement, including problem solving, number facility, automaticity, and reasoning. Student performed in the average range in math calculation, math reasoning, math vocabulary, and math reasoning skills. When testing, Ms. Torres assisted Student in focusing on a math problem by covering up the problems that he was not addressing and crossing out the problems that he would not take because they were beyond his range. She testified that this was consistent with the testing protocols. She also properly reported this process in the triennial psychoeducational evaluation. Overall, Student's broad math performance was in the average range, enabling him to grow and achieve in his first grade curriculum.

48. On Subtest 10 for applied problems, Student achieved five wrong responses in a row; the ceiling was six. Ms. Torres did not ask Student the next item because the entire section was about money and Student did not know about money. Therefore, she needed to stop and, for purposes of the subtest's integrity, the ceiling had been reached. Subtest 16, editing, started on one and was administered in accordance with protocol. For Subtest 18B, quantitative concepts, the ceiling was three; Ms. Torres stopped after item 6, though Student had not missed any consecutive items. She explained that before proceeding to item 7, the test protocol was to give Student two trial questions; he missed both. Therefore, the publisher's manual instructed that testing stop, though the ceiling not attained.

49. The broad written language cluster provided a comprehensive measure of Student's written language achievement, including spelling single-word responses, fluency of production, and quality of expression. The writing fluency subtest was not administered because Student was unable to complete the sample items independently. Ms. Torres stated that reporting the broad written language cluster score, though Student did not complete the writing fluency subtest, was consistent with the testing protocols. She properly noted this in the report. The sound spelling and work attack subtests revealed that Student was above average for his grade and high average for his age in his phoneme/grapheme knowledge. On Subtest 17, reading vocabulary, Ms. Torres started Student with item number one, though the scoring sheet indicated the subtest had a basal of four. She explained the required basal was not applicable to Student because of his age; protocol's recommendation was to begin Subtest 17 with the first item. Student's overall written language skills were in the average range, enabling Student to access and grow in his first grade curriculum.

50. In addition to administering standardized academic achievement instruments, Ms. Torres reviewed Student's state and district test performance, as well as

his classroom achievement, providing insight as to how Student was doing with the first grade curriculum. California Framework assessments for basic math facts were given by the classroom teacher quarterly. For the two quarters for which Student was assessed, he was at curriculum benchmark for math standards. Student's classroom teacher, Juanita Rivas, reported that Student was approaching benchmark levels in math and performed lower than two thirds of his peers in overall math skills.

51. Student also took quarterly California Framework assessments for the language arts. Student performed at the challenge level for spelling, strategic level for word read, and intensive level for writing, relative to reading and spelling short CVC words.⁵ For words with short vowel sound, digraphs, and long vowel patterns, Student performed at the intensive level for spelling, benchmark level for word reading, and strategic level for writing. Ms. Rivas reported that Student's decoding skills were emerging; however, his sign word knowledge was very low when compared to his peers.

52. Ms. Torres observed that Student did quite well on the standardized testing, but the curriculum testing indicated that Student was behind his peers. Her professional opinion was that the obtained scores – on the Brigance II and the WJ-III-Ach – were valid representations of Student's academic achievement and educational needs.

53. Ms. Torres provided responsive and insightful answers to questions that challenged her administration of various subtests. She was calm and deliberate. She demonstrated a thorough understanding of the WJ-III-Ach instrument, including the publisher's manual of instructions, consistent with her substantial experience in

⁵ CVC words are words that are created with the consonant-vowel-consonant sequence. They are typically used in teaching young children how to spell and speak effectively.

administering the test to hundreds of students. She convincingly established that she tested Student, consistent with the instrument's protocols, producing valid results.

Psychomotor Development

54. District evaluated the area of Student's psychomotor/perceptual functioning by administering the MVPT-R, Bender Gestalt-2, Koppitz-2, TVPS-3, and TAPS-3. Mr. Day and Ms. Torres reported and interpreted the scores in the written report.

55. The MVPT-R tested Student's visual perception in five areas: visual memory, visual closure, spatial relationship, figure-ground, and visual discrimination. Ms. Torres administered this test to Student, who obtained a perceptual quotient of 118 and a perceptual age of eight years. Student's scores indicated a performance within the average to high-average range for visual perception. Student had adequate visual perception in the classroom. Ms. Torres opined that the test, as well as her personal experience with Student, indicated Student's visual processing was not a concern. She also noted that Student took the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (Beery VMI) as part of the OT evaluation, which further indicated that Student did not have a visual processing concern.

56. Mr. Day administered the Bender Gestalt-2, which further evaluated Student's visual motor integration skills. Student was in the average range of visual motor integration. Mr. Day also scored the Bender Gestalt-2 with the Koppitz-2. Mr. Day explained that the Koppitz-2 offers a developmental, objective measure. Here, Student's motor index scores indicated that his visual motor skills were in the average range.

57. In reviewing the Bender Gestalt-2 test packet on cross-examination, Mr. Day said he only answered the first question on the packet's cover page; he said that Student did not require corrective lenses. He did not know why he did not answer the rest of the questions. He would have answered all of them "no." However, these

questions are not part of the scoring and do not affect the test results. They are merely informative of Student's physical presentation and test taking behavior, all of which Mr. Day otherwise reviewed in the report. Similarly, Mr. Day did not fill in a page in the packet asking for narrative review of family history, previous tests, comments and recommendations. Again, this page had nothing to do with the testing. Mr. Day otherwise providing this information in his report.

58. Mr. Day was trained and experienced in the administration of the TVPS-3, which he gave to Student in accordance to the test instructions, from which he did not deviate. Mr. Day administered all seven subtests, which included: visual discrimination, visual memory, visual spatial-relationships, visual form-constancy, visual sequential memory, visual figure-ground, and visual closure. In the report, Mr. Day described each subtest and the tasks that each subtest required of Student; he then provided a score and compared Student's performance to his same age peers. Student's overall score indicated that Student does not have visual perceptual deficits.

59. Because of his ADHD, Student demonstrated scatter among subtests due to distractibility and difficulty remaining on task. On two subtests, visual memory and visual-figure ground, Student performed poorly. Mr. Day opined that these subtests required focused attention and, therefore, were susceptible to Student's distractibility. He did not consider them to be indicative of Student's visual processing, requiring further testing. Generally, Student would indicate verbally or by his body language when he required a break. After a short break, when he would often draw on paper, he would return to the testing. He responded well to encouragement and reinforcement during the test. Generally, Student approached the TVPS-3 with patience and confidence. Mr. Day properly explained this in the report, noting that Student's breaks and performance were within test protocols.

60. Student's scores on the TVPS-3 indicated that his visual perceptual skills were within average range. This was also confirmed by Student's performance on the visual perception components of other testing instruments. For example, on the WJ-III-Cog, there were visual tasks which required Student to categorize and find objects, such as the concept formation subtest of fluid reasoning, which required Student to find the rules of a visual representation. Student was in the high average range, again demonstrating Student had adequate visual perception skills. Similarly, the visual perception components of the Bender Gestalt-2 and the MVPT-R further confirmed that Student did not demonstrate visual perceptual weaknesses. District utilized various instruments to evaluate Student's visual processing.

61. Ms. Torres and Mr. Day, along with other team members, discussed Student's visual perception. Both testified that visual processing was not an issue for Student. Student's visual processing was not a concern and his visual perception was adequate for him to access his curriculum.

62. Mr. Day gave the TAPS-3 to evaluate Student's understanding of the spoken word by measuring his phonological skills, such as auditory memory and comprehension. He chose the TAPS-3 because it was widely used for validating auditory perceptual skills. Mr. Day was trained and experienced in administering and interpreting the TAPS-3; he did not deviate from the test protocols.

63. The TAPS-3 subtests were designed to provide information in four areas: auditory attention, basic phonological skills, auditory memory, and auditory cohesion. The subtests provide the types of information necessary to assess the processing of auditory information that pertain to the cognitive and communicative aspects of language, producing three indexes, as well as an overall index score. The TAPS-3 Basic Phonological Index assessed Student's basic phonological abilities that enabled him to discriminate between sounds within words, to segment words into morphemes, and to

blend phonemes in words. All of these phonological skills are important for understanding language and learning to read. Student obtained an overall standard score better than 34% of same age peers. The three subtests are strictly auditory and many children find the test challenging. Student performed well enough on this index so that it was not an area of concern.

64. The Auditory Memory Index's four subtests measured Student's ability to retain what he heard and maintain it in the correct sequence. Student received a standard index score better than 27% of his peers. He was able to recall numbers in the same order and in reverse order, requiring him to mentally manipulate and sequence information. These tasks are usually more difficult for children to complete, but the novelty of the tasks appeared to engage Student.

65. The Cohesion Index was derived from the auditory comprehension and auditory reasoning subtests. These subtests assessed higher-order language skills that require pupils to use inferences, deductions, and abstractions to understand the meaning of a passage. Student performed better than 75% of his peers, which showed how well Student understood spoken language. Student's Cohesion Index score demonstrated his overall strength in understanding inferences and nuance.

66. Some subtest scores were of concern, such as word discrimination, blending sounds, and sentence memory. Though these subtest scores were lower, the scores were within the low average range, using one standard deviation. Mr. Day chose not to administer the optional auditory figure-ground subtest because the subtest was designed to help determine if a pupil had ADHD. Student had already been diagnosed with ADHD and Mr. Day did not wish to burden Student with another test, which would not provide useful information.

67. Student found it difficult to remain focused, moving about in his chair during the testing. Student was provided breaks throughout and the administration of

the subtests spanned a couple of days. Mr. Day properly and appropriately made note of Student's behavior in the report, providing insight of how this may have affected Student's performance. This was taken into consideration in scoring and evaluation.

68. Student's Overall Index score was 94, within the average range, while demonstrating a relative strength in cohesion. Student had the ability to access his curriculum and understand what the teacher said.

69. Mr. Day's testimonial demeanor was calm and deliberate. He demonstrated an in depth understanding of the testing procedures and a very good recall of Student's performance and behaviors. He explained testing processes, giving examples to provide clarity. He also appeared to genuinely enjoy Student, commenting upon Student's cooperative and fun-loving nature. Overall, Mr. Day was credible and persuasive.

Social Adaptive Behavior

70. The psychoeducational assessment evaluated Student's social adaptive behavior. On January 10, 2013, Mr. Day interviewed Mother. She described Student as loving and compassionate, with real anger issues. Mother stated that Student was demanding, had a hard time waiting, and would become upset with interruptions, especially when his line of toys was disrupted. She spoke of Student's regular flapping of his hands, picky eating habits, licking of his hand, and difficulty with crowds, especially at parties.

71. The assessment team used three standardized instruments: BASC-2; Conner-3; and GARS-2. After observing Student in the classroom, Mr. Day chose to use the BASC-2 to provide an overall view of Student's behaviors which otherwise might not be reported. He personally gave the parent rating scales to Mother for her completion.

72. Mother completed the parent scales of the BASC-2, where she rated Student's behaviors, which were grouped into domains. The scales yielded composite

scores for Externalizing Problems, Internalizing Problems, and a Behavior Symptoms Index. An Adaptive Profile was generated. Scale scores in the Clinically Significant range suggested a high level of maladjustment. Scores in the At-Risk range identified a significant problem that may not be severe enough to require formal treatment or may have the potential of developing a problem that needs careful monitoring. Mr. Day gathered and scored Mother's responses using the BASC-2 scoring system.

73. Mother reported significant concerns in the areas of hyperactivity, aggression, and conduct problems, in the Clinically Significant classification range. Mother scored Student's depression as Clinically Significant, reporting Student as withdrawn, pessimistic, and/or sad. Clinically Significant scores in this area could warrant further assessment.

74. On the Behavioral Symptoms Index composite-scale, Mother's responses put Student in the Clinically Significant classification range. Mother indicated that Student engaged in strange or odd behaviors, was generally disconnected from his surroundings, was frequently alone, had substantial difficulty making friends, and was unwilling to join in group activities. Her scoring for atypicality and withdrawal was in the Clinically Significant range. She reported that Student had difficulty maintaining necessary levels of attention at school, which might disrupt academic performance and functioning in other areas. Her scoring for attention problems fell into the At-Risk classification range.

75. For the Adaptive Skills composite, Mother rated Student in the Clinically Significant classification range for adaptability, social skills, leadership, activities of daily living, and functional communication. Mother reported that Student had extreme difficulty adapting to changing situations, had difficulty complimenting others, being tactful and socially acceptable, lacked creativity, had difficulty making decisions, struggled with getting others to work together, had difficulty performing simple daily

tasks safely and efficiently, demonstrated unusually poor expressive and receptive communications skills, and had significant trouble seeking out and finding information.

76. The BASC-2 scoring produced Content Scales for Anger Control, Developmental Social Disorders, Emotional Self-Control, Executive Functioning, Negative Emotionality, and Resiliency, all of which Mother scored in the Clinically Significant classification range. Mother had Student in the At-Risk range for the Bullying Content Scale.

77. Mr. Day provided the scale scores and percentage rankings in the District's psychoeducational assessment report. He also included an Item and Response breakdown for each scale that was in the Clinically Significant range per Mother's report; more than 165 responses were listed.

78. Student's first grade general education teacher, Juanita Rivas, completed the BASC-2 teacher rating scales. Ms. Rivas testified at the hearing. She obtained a bachelor of arts in liberal arts from California State University, Long Beach in 1987, and earned her master of arts in advanced teaching from La Verne University in 2006. She was an appropriately credentialed general education teacher and taught first grade at District for 25 years. Student was in Ms. Rivas' first grade class for the 2012-2013 school year; she had known Student for approximately six months when she completed the teacher scales.

79. Mr. Day scored the teacher's responses in the same manner as Mother's responses. He reported the results, noting that Ms. Rivas' responses yielded no Clinically Significant concerns. Ms. Rivas' responses identified learning problems as being in the At-Risk classification range. Ms. Rivas' responses identified eight learning problems, which Mr. Day listed in the assessment report.

80. The instructions as to how the teacher was to complete the scales was printed on the first page. Each item contains a phrase describing a behavior, such as "Is

creative” or “Sneaks around.” For each described behavior, the teacher was to circle one of four responses: N (never occurs), S (sometimes occurs), O (often occurs), or A (almost always occurs). The instructions also included the following statement:

Please mark every item. If you don’t know or are unsure of your response to an item, give your best estimate. A “Never” response does not mean that the child “never” engages in a behavior, only that you have not observed the child to behave that way.

81. Ms. Rivas did not circle any response for nine of the 139 scale items. She admitted that she should have responded, pursuant to the printed instructions, even if she felt she had no knowledge with which to respond or the described behavior was a situation which she felt Student never experienced.

82. Mr. Day acknowledged in his testimony that Ms. Rivas should have responded to all the scale items. However, based upon his training in scoring and interpreting the BASC-2, as well as his experience in having administered the BASC-2 hundreds of times, Mr. Day opined that the missing responses did not invalidate the teacher’s scales or otherwise render the scales noninterpretable. Mr. Day accurately entered Ms. Rivas’ rating scales into the computerized BASC-2 scoring system, which produced the results that he provided in the triennial assessment report. The scoring system did not indicate that the teacher’s scales were not to be reported, or were otherwise not to be interpreted, because of Ms. Rivas failure to provide responses for nine items.

83. The failure of Ms. Rivas to respond to nine of the 139 scales did not render the teacher rating scales noninterpretable and did not undermine the integrity of the Student’s BASC-2 results.

84. Mr. Day testified that Mother and Ms. Rivas saw Student in two very different environments – home and school. In school, Student was in a very structured setting, with specified limitations, which likely assisted Student in his behaviors. In the classroom environment, Student had learning problems, such as poor handwriting and reading. Mother saw Student in a dissimilar environment and would see behaviors not exhibited in the classroom. The purpose of the BASC-2 was to obtain insight of Student’s behaviors and, to do so, the scale responders were to provide responses consistent with observations and experience in their respective environments.

85. Mr. Day included a Multi-Rater T-Score Profile, at the conclusion of his review of the BASC-2 results in the psychoeducational assessment report. The profile graphed the scale responses from both Mother and Ms. Rivas, clearly demonstrating that only Mother provided responses which resulted in Clinically Significant concerns in any domain.

86. District also utilized the Conners-3 assessment tool to obtain further information regarding Student’s behavior because, as Mr. Day explained in both the report and his testimony, the Conners-3 was designed to assess ADHD, as well as ADHD’s most common co-morbid problems in children aged six to 18 years of age. He had both Mother and Ms. Rivas complete forms.⁶

87. Mr. Day scored Ms. Rivas’ completed Conner-3 Teacher form using the publisher’s scoring program. Her responses indicated more concern in the area of hyperactivity and impulsivity than was typically reported for same age children. Ms.

⁶ For the Conners-3, Mr. Day did not report the areas that were not indicated to be a concern by the responders.

Rivas' response type did not yield an overly positive or negative response style⁷ and the results appeared to be a valid sampling of Student's behaviors at school. He included a graph of the teacher's responses in the report.

88. Mother completed the Conners-3 Parent scale form and her responses yielded significant concerns. Mother's scores for the Content scales were very elevated, indicating many more concerns than were typically reported, such as inattention, hyperactivity/impulsivity, learning problems, defiance/aggression, and peer relations. Mother's responses suggested that Student had many more concerns than were typically reported. Mr. Day also included a graph of Mother's responses in the report. In reviewing Mother's response style, Mr. Day properly reported that Mother's Negative Impression score indicated a possible negative response style, with scores that may have presented less favorable impressions than were warranted.

89. Based on Mother's ratings, an ADHD classification was strongly indicated, but other clinically relevant information needed to be carefully considered in the assessment process. Mr. Day, and ultimately the assessment team, determined that both the raters – Mother and Ms. Rivas – supported a finding of hyperactivity and impulsivity for Student.

90. Mr. Day used GARS-2, which was a screening instrument for the assessment of individuals who have behavioral problems that may be an indication of

⁷ The Conners-3 includes three Validity scales: Positive Impression (PI), Negative Impression (NI), and Inconsistency Index (IncX). The publisher's instructions state that Validity scale scores should be considered as indicative of potentially problematic response styles. The Conners-3 computerized scoring program produces the Validity scales, which protocol requires be included in the report, with the recommendation that clinical judgment be used in the interpretation of elevated Validity scale scores.

ASD. The GARS-2 consisted of three subscales that were based on the 2003 definition from the Autism Society of American and the DSM-IV-R. The subscales were: stereotyped behavior, communication, and social interaction. Parent's responses produced subscale scores that yielded "Very Likely" probability of autism. Ms. Rivas' responses yielded an "Unlikely" probability of autism.

91. Assessment team member and District school counselor Shannon Patterson Culley,⁸ administered the SSIS to Student. She testified at the hearing, at which time she was a behavior technician at Autism Behavior Counseling Group, Inc., in Aiea, Hawaii, where she provided intensive applied behavior analysis (ABA) program services for children with ASD, developmental delays, and behavior disorders. From 2011 through June 2013, she worked for District as a school counselor at Gaines Elementary and Lincoln Elementary schools. For Long Beach Unified School District, she was a substitute teacher for 2010-2011 school year and a school counselor from the 2007-2010. For the Bellflower Unified School District, she was a guidance counselor intern between 2006 and 2007 and a substitute teacher from 2004 to 2007. Ms. Culley received a bachelor's degree in psychology in 1998 from University of California, Santa Barbara, and a master's degree in clinical psychology in 2001, from Antioch University. She obtained her pupil personnel services (PPS) credential in school counseling from California State University at Dominguez Hills in May 2007. The PPS enables Ms. Culley to provide school counseling services and authorizes her to administer assessments such as the SSIS.

⁸ Since administering the test to Student, Ms. Culley married and moved to Hawaii, from where she testified via telephone. In the written reports, she is referred to as Ms. Patterson. With Ms. Culley's permission, the decision uses her married name, thus avoiding any confusion with Student's witness, Rosa Patterson.

92. Ms. Culley has been a school counselor for five years and has counseled approximately 800 students and conducted about 40 assessments. While working for the District, Ms. Culley's duties included: developing behavior support plans; conducting functional behavioral analysis assessments; at-risk, crisis, and DIS counseling services; referral and coordination of services with community providers; participating in the Pyramid Response to Intervention team; providing support interventions to teachers and students; and performing service provider responsibilities on IEP teams.

93. Ms. Culley knew Student at the time she assessed him because Student was part of her caseload. She worked with Student on a weekly basis, both individually and in small social groups, focusing on Student's goals, to develop social skills in interpersonal interaction and play. She observed Student in the classroom and in the play yard. She reviewed Student's prior IEP's and discussed appropriate instruments with the assessment team members, concluding that there needed to be a focused assessment of Student's social skills. They decided to use the SSIS. Ms. Culley believed Student's areas of suspected disability were autism and ADHD.

94. The SSIS was an integrated system designed to identify and classify pro-social and problem behaviors, which can aid in the design of intervention plans. The test was standardized, nondiscriminatory and validated. Ms. Culley scored and interpreted the SSIS in accordance with the publisher's instructions. She used the publisher's computer software program for scoring; she accurately entered the scale responses into the program. She used the most recent version of the SSIS available and administered the complete instrument.

95. The SSIS Rating Scales comprise a broad assessment of a student's social behaviors, including behaviors that can affect teacher-student relations, peer acceptance, and academic performance. The SSIS has two rating scales – the Social Skills

Rating Scales and the Problem Behaviors Rating Scales. Mother and Ms. Rivas completed both sets of scales.

96. Social skills were defined as socially acceptable learned behaviors used to promote positive interactions while simultaneously discouraging negative interactions. The Social Skills Scales organized pro-social behaviors into seven areas or subscales: communication, cooperation, assertion, responsibility, empathy, engagement, and self-control. Student's Social Skills scale standard score based on Ms. Rivas' rating put Student within the average behaviors range. Mother's responses put Student within the well-below average pro-social behaviors level.

97. The Problem Behaviors Rating Scales addressed a broad array of problem behaviors, from relatively mild (e.g., acts without thinking, fidgets, etc.) to more severe (e.g., bullies others, talks back to adults, etc.). These behaviors interfere with a person's social skills development. The scales organized problem behaviors into five subscales: externalizing, bullying, hyperactivity/inattention, internalizing, and autism spectrum. Student's Problem Behaviors scale standard score based on Ms. Rivas' rating put Student within the average problem behavior range. Mother's responses put Student within the well-above average problem behavior level.

98. Ms. Culley graphed both responders' scale scores for the report. She also provided a validity index summary, indicating that the response pattern and response consistency of both responders was in the acceptable range.

99. Ms. Culley testified that the SSIS was not designed to be a standalone report but, instead, was intended to be used in collaboration with other assessors and assessments, including observations and experience with Student. The SSIS was part of evaluating and addressing Student's behaviors. The psychoeducational assessment report reflects this collaboration of team members and considerations of multiple assessments.

100. During her testimony, Ms. Culley was courteous and cooperative, exhibiting an in-depth knowledge of Student. Ms. Culley was able to bring her working knowledge as Student's counselor to the team discussions, which were set forth at the end of the psychoeducational report. Her demeanor was caring and good humored. Her education, training, credentials, and experience qualified her to administrate and interpret the SSIS, as well as knowledgeably participate as a member of the triennial psychoeducational assessment team.

Collaborative Summary and Recommendations

101. The psychoeducational assessment team collaborated in preparing a summary and recommendations based upon their assessments of Student. They discussed the standardized instruments, their findings, and which eligibility applied to Student. The team concluded that Student had not met the criteria for eligibility as autistic-like. They referred to California Code of Regulations, Title 5, section 3030, subsection g, noting that Student did not exhibit two or more of the requisite autistic-like behaviors.

102. The team recommended that the IEP team find that Student met the criteria for OHI eligibility, referring to California Code of Regulations, Title 5, section 3030, subsection f, in accordance with Education Code, section 56339. The team noted Student's limited strength, vitality, and alertness due to a chronic or acute health problem, as documented in the report. Student's ADHD impairment adversely affected Student's educational performance, demonstrating Student's need for special education and related services.

103. The psychoeducational assessment team provided recommendations to the IEP team, listing suggested services, modifications, and accommodations for consideration.

SPEECH AND LANGUAGE ASSESSMENT AND EVALUATION

104. As part of the Student's triennial January 2013 report, District speech and language pathologist (SLP) Ashley Boyer conducted a SAL assessment and evaluation. Ms. Boyer testified at the hearing. Ms. Boyer earned a bachelor of arts and master of arts in communicative disorders, from California State University, Fullerton, in 2007 and 2009, respectively. She was licensed as a SLP and held a Certificate of Clinical Competence in Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association (ASHA).

105. Ms. Boyer had worked for District as a SLP since September 2011. Previously, she was a SLP at Los Angeles Unified School District from 2009 through 2011. She worked for Placentia-Yorba Linda Unified School District, as a SLP for the 2008-2009 school year (on a waiver) and as a SLP assistant and a special educational aide from 2005 to 2008. She had provided speech evaluations and services to students for seven years and had assessed between 150 and 200 students.

106. Ms. Boyer knew Student before the assessment because she had been providing him therapy since kindergarten. Before assessing Student, Ms. Boyer conducted parent and teacher interviews and reviewed Student's IEP's and school records. Based on Mother's input, Ms. Boyer focused the assessment on Student's articulation and language.

107. Ms. Boyer used multiple measures to assess Student in all suspected areas of SAL needs. She affirmed that the standardized tests were validated for the purposes used and were not discriminatory. She personally administered the standardized instruments, for which she had been trained. She followed and did not deviate from the test publishers' instructions. She included the results of her testing and evaluation in the SAL portion of the January 2013 multidisciplinary team report. Ms. Boyer's education,

training, knowledge, and experience as a licensed and credentialed SLP, qualified her to assess Student's SAL needs, including the administration of standardized instruments.

Fluency and Voice

108. Fluency was the smoothness and rate with which sounds, syllables, words and phrases are joined together during oral language. Dysfluencies are commonly referred to as stuttering. Based on informal measures, Ms. Boyer determined that Student's fluency was within normal limits and was not an area of suspected disability. However, per Mother, fluency was an area of concern. Therefore, Ms. Boyer conducted more formalized assessment.

109. Using the SSI-4, a spontaneous language sample of 150 utterances was analyzed to determine the presence of dysfluent moments. There were zero episodes of dysfluencies, and no secondary characteristics related to dysfluency. Ms. Boyer concluded that Student did not exhibit a fluency disorder.

110. Ms. Boyer also evaluated the components of Student's voice, including pitch, intensity, resonance, and quality. She informally judged Student's voice to be functioning within normal limits for his age and gender and not an area of suspected disability.

Articulation

111. Articulation was the motor function whereby movement of the lips, tongue, palate, vocal cords and the muscles of respiration convert sounds into words. Ms. Boyer used a number of instruments, as well as observation and examination, to evaluate Student's articulation.

112. Ms. Boyer conducted an oral peripheral examination to observe and evaluate the structural and functional integrity of Student's oral cavity. Student's oral motor skills were found to be within normal limits. Intra-oral examination did not reveal

any structural abnormalities, such as scars or fissures of the tongue. Student's tongue size was proportional to his oral cavity. His oral structures and facial symmetry were intact for adequate speech production.

113. Ms. Boyer administered the Clinical Assessment of Articulation and Phonology (CAAP), which was designed and normed to assess articulation and phonology in school children of Student's age. The articulation inventory assessed Student's speech production, using a two components: consonant inventory and school age sentences. In her written report, as well her testimony, Ms. Boyer reviewed Student's articulation errors as determined by the CAAP consonant inventory. Some were considered within developmental age norms, while one (b for v) would be considered developmentally delayed; however, this did not impact Student ability to be understood or access his education. Similarly, the Goldman-Fristoe Test of Articulation 2 (GFTA-2) results found very minimal errors, none of which affected Student's ability to access his education program.

114. Ms. Boyer also utilized a speech sample of connected speech as a means of informally assessing Student during conversational speech. This was not a standardized measure, not discriminatory, and appropriate for SAL assessments. Ms. Boyer determined that Student speech intelligibility was 100 percent intelligible.

115. Ms. Boyer gave a SAL questionnaire to Mother, teacher Ms. Rivas, and RSP Ms. Torres. Neither Ms. Rivas nor Ms. Torres noted any area of concern. They understood Student's speech and had not observed others having any difficulty understanding Student. Mother had concern with some speech sounds. She understood Student most of the time but sometimes had to have Student repeat himself.

116. Ms. Boyer concluded that Student's speech production and intelligibility did not affect Student's ability to interact with peers nor otherwise affect his functioning

within the classroom setting. She memorialized her findings in the report for the IEP team.

Language

117. Ms. Boyer utilized the Comprehensive Assessment of Spoken Language (CASL), which was a standardized oral language assessment battery of individually-administered test for children, ages three through 21 years. The instrument measured Student's process of comprehension, expression and retrieval in the following language categories: lexical/semantic (knowledge and use of words), syntactic (grammar), supralinguistic (complex language), and pragmatic (appropriate language use, as well as ability to modify language for situation). Ms. Boyer also administered the Expressive One Word Picture Vocabulary (EOWPVT)⁹ and Receptive One Word Picture Vocabulary Test (ROWPVT), which assessed Student's abilities related to labeling and recognizing common objects, actions and ideas. The questionnaire also had items related to language.

118. Ms. Boyer used the results in evaluating Student's receptive language skills. On CASL's basic concepts subtest, Student obtained a standard score which fell into the 55th percentile of same aged peers; on the paragraph comprehension subtest, Student scored in the 81st percentile. On the ROWPVT, Student performed better than 85 percent of his same-aged peers; on the EOWPVT, better than 70 percent. On the questionnaire, Mother said that Student did not follow instructions while both teachers

⁹ During her testimony, Ms. Boyer agreed that the EOWPVT answer sheet showed that she stopped when Student attained a ceiling of seven (7), when the ceiling was actually (6). She should have stopped at item 97, not 98. However, there was no evidence that the one item difference substantively affected the EOWPVT results, other than to lower the computed raw score by one point.

reported Student did. Ms. Boyer concluded that Student's receptive language was intact and would not adversely affect his academic performance.

119. For expressive language skills, Ms. Boyer used four CASL subtests. For antonyms, Student score was in the 25th percentile; in sentence completion, 19th percentile, which was within adequate limits; in syntax construction, 27th percentile, which was within the normal range for program participation; and in pragmatic judgment, the 53rd percentile. In the EOWPVT, Student was able to accurately label a variety of pictures, performing in the 70th percentile. In the questionnaire, both teachers indicated that Student expresses his ideas, asks for help, and answers who, what, when, where, and why questions. Mother's responses were more equivocal, saying "most of the time" or "some of the time."

120. Ms. Boyer also informally assessed Student's expressive language skill by using a language sample, while clinically observing Student to determine his mean length of utterance and the morpho-syntactic complexity of his speech. Such informal language sampling was an acceptable and common practice in SAL evaluations. In her report, Ms. Boyer detailed the sampling process, the comparative measures, and Student's performance. She concluded that Student was able to ask and answer questions in class, as well as age appropriate exchanges.

121. Ms. Boyer assessed Student's pragmatic language using the CASL's pragmatic judgment subtest. Student's pragmatic subtest performance was better than 53 percent of his same-aged peers. She also assessed his pragmatic and social language skill through the acceptable practice of informal classroom and clinical observations and interactions. She affirmed that Student maintained normal eye contact during conversations, even when she asked Student to elaborate or to ask her questions. Student was able to shift and maintain topics by commenting and asking questions when the topic was not of his interest. He was able to: comment about present, past and

future events and answer questions (who, what, when where, when, how, why, yes, no) regarding visual stimuli, personal information, and his environment. Student was able to formulate his thoughts and express his needs and was observed to participate in his classroom and small group settings. In the questionnaire, Ms. Rivas and Ms. Torres said the Student made his wants and frustrations known, interacted and played with other children appropriately, took turns during conversations, answered questions during conversations, was able to stay on topic during conversation, and was able to initiate conversations. Mother stated that Student inappropriately made his wants known, sometimes played appropriately with other children, did not take his turn in conversations, did answer questions (but usually responded "I don't know"), did not stay on topic, and was unable to initiate conversation.

122. Ms. Boyer measured Student's comprehension and production of connected speech by administering the Test of Narrative Language (TNL, which measured Student's ability to answer questions about stories to retell stories, and to create his own stories. Mother specifically requested this test. The TNL was designed for children, ages five through 11 years, has two subtests (narrative comprehension and oral narration) and produces a narrative language ability index. Student's scores on both subtests were in the 98th percentile, indicating that Student's narrative comprehension and oral narration skills are superior to his same aged peers. On the Questionnaire, Mother indicated that Student is not able to retell a personal narrative and would look confused; he could not retell a story. Both teachers reported Student was able to retell a personal narrative and a story.

123. Ms. Boyer concluded that Student's pragmatic/social language and narrative language skills and abilities were intact for functional communication with peers and adults. Student was able to communicate his thoughts and understand

pragmatic rules, enabling him to access and participate in his educational program. She memorialized her findings in the report for the IEP team.

124. Ms. Boyer summarized her findings for the January 2013 multidisciplinary report. She concluded that Student was not eligible for special education pursuant to Education Code, section 56333, because Student did not have a fluency disorder which affected his communication. Further, Student did not have articulation or language performance difficulty which adversely affected his educational performance. Her SAL evaluation concluded that Student did not present with a language, speech, or fluency deficit.

OCCUPATIONAL THERAPY ASSESSMENT

125. As part of the Student's triennial January 2013 report, occupational therapist Karen L. Shelton conducted an OT evaluation of Student. She testified at the hearing. Ms. Shelton had a bachelor of science in health sciences and a master's degree in occupational therapy, from Loma Linda University, in 2009 and 2010, respectively. She was licensed as an occupational therapist with California and the National Board of Occupational Therapy, both of which require an advanced degree. She was also certified to administer the Sensory Integration and Praxis Test (SIPT).

126. For the OT assessment, District contracted with Gallagher Pediatric Therapy Inc., where Ms. Shelton had worked since 2012, maintaining a school district caseload of 82 clients a week, including children with autism, ADD/ADHD, oppositional defiance disorder, Down syndrome, intellectually delayed, cerebral palsy, and muscular dystrophy. Her duties included individual evaluation and assessment of clients, direct and consultation OT services, developing home programs for parents, preparing progress and evaluation reports, relative to children between two and 16 years of age. She was trained and experienced in administering numerous standardized assessment instruments, including the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition

(BOT2) and the Beery VMI. From 2010 to 2012, she was an occupational therapist with Goodfellow Occupational Services and Fresno Unified School District, where she also did level II OT fieldwork in 2009. In early 2010, she did OT fieldwork at San Joaquin Valley Rehabilitation Hospital. She had provided services to about 300 students and conducted approximately 200 OT assessments. Ms. Shelton's education, training, knowledge, and experience as a licensed and credentialed occupational therapist, qualified her to assess Student's OT needs, including the use of informal assessment tools and the administration of standardized instruments.

Standardized Tests

127. Ms. Shelton assessed Student using the BOT2 and Beery VMI, as well as informal tools of clinical observation, teacher interview, interview with support staff, and classroom observation. She was aware that Student's eligibility was autistic-like behaviors. In the report, Ms. Shelton noted that Student was on medication for his ADHD; however, Student stated during testing that he had not taken his medication for that day.

128. The testing and evaluation were conducted on November 23, 2012, with Student and Ms. Shelton in a small room. Student was willing to participate in the activities, but became restless and "bored." He was given small breaks where he engaged in self-regulation activities, which included leaning on the table so he could lift his feet off the floor, sitting in the chair and wrapping his legs around the chair legs, pushing on the seat with his hands.

129. As the assessment moved to more challenging tasks, Student said he was bored more often, explaining that the tasks were too hard and he did not want to do anymore. When encouraged to continue, he would engage in the task for a few minutes, before again stopping. At one point in the assessment when asked to write a sentence, Student took Ms. Shelton's pen, held it up, and said "If you keep telling me to do this, I

will poke you in the eye with this pen.” However, Student calmed down and returned to the task and completed writing the sentence. Ms. Shelton said that she did not feel threatened by Student, ascribing much of Student’s distractibility to his ADHD, his need to self-regulate, and the absence of his daily ADHD medication.

130. The BOT2 was a standardized test for individuals, four to 21 years of age, used to measure Student’s fine motor and gross motor control skills over four composite areas. These areas were organized around the muscle groups and limbs involved in the movement and included: fine manual control, manual coordination, body coordination, and strength and agility. Student scored in the average range of similar aged peers.

131. Ms. Shelton administered the Beery VMI, which measured the extent to which Student could integrate his visual and motor abilities (eye-hand coordination). She used the Beery VMI (Full Form), which was a developmental sequence of geometric forms to be copied with paper and pencil. She also gave Student the Beery VMI optional supplemental tests of visual perception (Student’s ability to see a shape and identify a matching shape) and motor coordination (Student’s ability to draw a line within a designated path to trace and form a shape).

132. On the Beery VMI (Full Form), Student’s scores were in the average range. Student scored in the below average and very low range on the supplemental tests of visual perception and motor coordination. Ms. Shelton emphasized in her report that the subtest scores should be interpreted with caution because the two tests were timed, which affected Student’s scores. Student would attempt the assessment tasks without looking at the paper or refuse to continue. However, when informally assessed (not timed), Student was able to complete all components of the two supplemental tests at peer level.

Clinical Observations and Evaluation

133. Ms. Shelton directed Student to perform various tasks while she observed and evaluated Student's performance. Such clinical observations are standard practice in OT assessments. The tasks and observations were grouped into components or disciplines related to Student's OT performance and needs. Ms. Shelton also observed Student in the classroom and at play.

134. The first set of clinical observations were to assess Student's Organization of Behaviors, such as his activity level, performance of goal directed behaviors, attention to task, purposefulness of play, and reactions to changes in his environment. Ms. Shelton determined that Student's performance was adequate (as opposed to inconsistent or a concern) in all eight of the observed behaviors, including the ability to remain still and seated during activity.

135. Ms. Shelton evaluated Student's neuromuscular status, finding that his joint range, muscle tone, strength, trunk control, and endurance were within functional limits for school-related activities. Student was able to access his educational environment without any modifications or adaptive equipment.

136. Ms. Shelton evaluated Student's Sensory Processing, or somatosensory perception, as two functions. The first, proprioceptive functions, involved Student's localization of his joint and muscle movement and position, which were related to correct awareness of Student's body in space. Accurate feedback from skin, joints, and muscles contributed to developing an internal "map" of Student's body. Ms. Shelton found that Student was adequate in all eight component areas tested. Student's proprioceptive processing skills were appropriate for his school environment. She also found that Student was adequate in seven component areas for registration, discrimination, and defensiveness.

137. Ms. Shelton evaluated Student's Motor Planning (praxis), which was his ability to spontaneously sequence, time, and organize movements in a coordinated fashion to complete unfamiliar tasks. The three components of Student's praxis were ideation (the idea to perform a new action), motor planning (planning the movements), and execution (performance of the action). Good praxis was dependent upon accurate sensory feedback from the body. Ms. Shelton found Student to be adequate or appropriate in the component areas tested, commenting that Student was able to create, plan, and execute tasks with minimal prompting and was able to follow verbal commands.

138. Gross Motor Skills referred to Student's use of the large body muscles (limbs and torso) for positioning (sitting, standing), locomotion (walking, running), balance, and coordination activities. Ms. Shelton found Student to be functional (as opposed to emerging or assisted, and a concern) in all 11 component areas tested for basic movement skills, higher balance and movement skills, and use of play equipment. Student demonstrated no difficulty assessing his playground equipment and interacted appropriately with his peers when playing. He had no loss of balance when maneuvering around his classroom and did not bump into objects.

139. Student's Fine Motor Skills were his use of small muscles of the hand for grasping, prehending, and manipulating objects for play, exploration, functional tool use, and activities of daily living. She evaluated Student as functional in five fine motor skill component areas. She recorded Student's grasp patterns and affirmed his in-hand manipulation of palm to finger and finger to palm. She found Student skilled in his scissor grasping. For graphic and motor tasks, Student has efficient wrist position, a tripod writing grasp, dynamic (appropriate) distal finger movements, while stabilizing the paper. He was able to properly use the eraser and pencil sharpener. Student was

observed to use excessive pressure on the paper when writing or drawing, but he did not tear the paper nor fatigue his hand.

140. Ms. Shelton evaluated Student's Visual Motor Skills, which was the coordination of visual, perceptual, and motor abilities for task performance. This included Student's eye-hand coordination skills (fine motor tool use and writing). She observed Student's scissor and graphomotor skills and determined, in all component areas tested, that Student was functional. Ms. Shelton also obtained writing samples from Student's teacher. Student was emerging and inconsistent in letter formation, size, directionality, spacing, and placing, as well as in near-point and far-point copying. Some of this was developmentally appropriate for Student's age, but Ms. Shelton opined that Student needed a little more help than other children in the classroom. She did not believe that direct OT services would benefit Student. Instead an OT consultation with Student's teacher, RSP, and aide – those who worked with Student – would better address Student's emerging execution skills.

141. In looking at Student's self-care skills, Ms. Shelton found Student to be independent or functional in all component areas tested for dressing, hygiene, and toileting. Student was able to perform self-care, daily living activities.

142. Ms. Shelton summarized her findings and recommendations in her OT report, which was provided to the triennial IEP team. Student's areas of strength were in gross motor skills, motor planning, self-care skills, fine motor skills, and sensory processing as related to school activities. Student's area of concern, as related to school performance, was his self-regulation when presented with difficult tasks. Ms. Shelton recommended OT consultative services, noting that Student was able to participate in his current educational program.

The Sensory Integration and Praxis Test

143. Mother requested that District perform the SIPT, which Ms. Shelton administered on November 19, 2012. SIPT was an established assessment standardized for administration to children between the ages of four and eight years, 11 months. SIPT was generally used to initially diagnose whether, and the degree to which, children possess sensory processing disorders. SIPT has 17 subtests, in four categories: motor-free visual perception; somatosensory; praxis (motor planning), and sensorimotor. The publisher's protocols in SIPT administration are very restrictive, such as specifying the administrator's facial expressions, voice modulation, and body positions. Therefore, SIPT administrators must be certified to administer the test in accordance with the publisher's strict requirements, upon which the results were standardized. Ms. Shelton had been properly certified to administer the SIPT for two years and had administered the test 24 times, 12 times before she tested Student. She followed the publisher's protocols, without variation, in administering the test to Student. The test was used for the purpose it was validated for and was not racially, culturally, or sexually discriminatory.

144. The SIPT assessment rated Student's subtest performance as average, mild dysfunction, or definite dysfunction. Ms. Shelton evaluated Student's performance using the SIPT educational model, whereby mild or definite dysfunction did not necessarily indicate an area of need in Student's educational environment. In other words, a dysfunction would be an area of need if it affected Student's participation at school or on the playground.

145. The SIPT assessment found Student's strengths to have been constructional praxis, bilateral coordination, good disposition, and willing attitude. Areas of concern were manual form perception, kinesthesia, finger identification, graphesthesia, postural praxis, and standing walking balance. All of these were proprioceptive input concerns which could affect his educational environment.

146. Ms. Shelton recommended OT intervention using developmental and neurobiological approaches. She discussed with the IEP team the development of a sensory diet for Student, to be used throughout his day across all of his environments. Ms. Shelton noted that the observations of other test administrators and team members, regarding Student's behaviors when challenged by tasks, were further indication of Student's need for proprioceptive input and regulation, consistent with her findings. A sensory diet would be a list of activities, which Student could employ to help him regulate himself, stay focused, and attend to his tasks, without disrupting his classmates. Ms. Shelton gave chair pushups as an example.

147. In Ms. Shelton's opinion, Student's visual processing was not an area of concern for OT. She also referred to the MVTP and the TVPS, which were administered by Ms. Torres and Mr. Day, as also indicating that visual processing was not a concern for Student. Letter reversals were developmental and not uncommon at Student's age and not due to a visual processing disorder. She cautioned that visual processing deficit symptoms are also seen with ADHD.

148. Ms. Shelton recommended that the OT intervention be provided via consultation and collaboration. Teachers, aide, and Parent would also address Student's difficulty with letter formation throughout his day. Ms. Shelton accurately and fully assessed Student's OT educational needs, which she reported to the IEP team.

STUDENT'S EXPERT

149. Student offered Rosa E. Patterson as an expert witness who could speak to the validity of District's testing and the appropriateness of the assessments. Ms. Patterson was a behavioral specialist, who founded and owns Autism Behavior Service, Inc. (ABSI). She received her bachelor of arts in psychology from University of California, Los Angeles, in 1996. In 2006, she earned a master in science in counseling, with an emphasis on marriage and family therapy, from California State University, Fullerton. In

addition to her formal education, Ms. Patterson has received training in the Picture Exchange Communication System, autism diagnostic observation, social skills, and bullying and autism. She has a 2008 graduate certificate in behavior intervention in autism from University of Massachusetts, Lowell. Her assessment course work primarily involved how to conduct a functional behavior assessment. She was an adjunct faculty member at National University, where she teaches introduction to ABA and assessment and behavioral applications in autism. Ms. Patterson was a board certified behavior analyst. She was not trained or credentialed as a school psychologist, a speech pathologist, an occupational therapist, a general education teacher, or a special education teacher. Her training and experience was primarily in behavior and autism.

150. At ABSI, Ms. Patterson conducts assessment services, provides behavior intervention consultation to families and schools, supervises and provides direct ABA intervention, participates in IEP's, and generally oversees the daily administration of the staff and business. Before founding ABSI in 2010, she was an autism specialist with the Tustin Unified School District from 2003. She was a service coordinator at Regional Center of Orange County from 2002 to 2003 and a private ABA consultant and supervisor from 2001 to 2003. From 1997 through 2001, Ms. Patterson was a case supervisor and workshop consultant with the Lovaas Institute for Early Intervention and, in 1998, was a research assistant to Dr. O. Ivar Lovaas for observational learning. She has worked in special education for 18 years and conducted an estimated 1000 behavior related assessments.

151. Ms. Patterson offered her opinion as to the appropriateness and validity of the District assessments.¹⁰ She had reviewed the January 2013 District team

¹⁰ Ms. Patterson conducted a behavioral assessment, producing a report dated March 23, 2013, based on testing and observations in February and March 2013. The

multidisciplinary report. She asserted that the one, formal class she took on assessment procedure and practice, along with her advanced degree, qualified her to administer all the instruments which the District utilized in producing its January 2013 report.

However, other than the Brigance II, Ms. Patterson had never administered any of the testing instruments. She had not been trained in the administration, scoring and interpretation of: WJ-II-Ach, WJ-III-Cog, MVPT-R, TAPS-3, Bender Gestalt-2, Koppitz-2, TVPS-3, GARS-2, BASC-2, Conners 3, SSIS, CASL, TNL, CAAP, GFTA-2, EOWPVT, ROWPVT, or SSI-4. She never read any of the publishers' instruction manuals. Instead, Ms. Patterson primarily relied on telephone conversations with unidentified individuals from various publishers.

152. Ms. Patterson was critical of District assessments. Ms. Patterson generally reviewed each subtest administered by Ms. Torres. In her opinion, the entire WJ-III-Ach results were invalid because subtests were not administered per protocols. In doing so, Ms. Patterson offered no analysis, stating that she understood that all portions of a testing instrument needed to be administered, per the publisher's instructions; therefore the entire WJ-III-Ach was invalidated. In particular, Ms. Patterson asserted that the results for Subtest five of the WJ-III-Ach were not in accordance with protocol because the ceiling was six and only five consecutive wrong answers were recorded. However, Ms. Torres adequately explained she stopped at the fifth wrong answer because Student refused to continue. Therefore, Student actually hit the ceiling of six since Student refused to continue because the items were too hard; it was the same as missing the sixth word in a row. The subtest was administered in accordance with the publisher's protocols. The absence of recording a sixth missed spelling word on the answer sheet

ABSI report did not provide relevant information because the three assessments at issue herein were conducted and considered months before.

did not render the results invalid. Ms. Patterson also criticized Subtest 10 for applied problems, because Student produced five wrong responses in a row and the ceiling was six. However, Ms. Torres did not ask Student the next item because the entire section was about money and Student did not know about money. Therefore, she needed to stop and, for purposes of the subtest's integrity, the ceiling had been reached. Again, this was in accordance with the test protocols.

153. Ms. Patterson opined that Ms. Rivas' failure to respond to all the scale items on the list rendered the results of the BASC-2 invalid. Ms. Patterson, though, had never administered or been specifically trained in scoring and interpreting the BASC-2. She never read the BASC-2 publisher's instructions. Therefore, her testimony in this regard was unpersuasive. Ms. Patterson further questioned the legitimacy of the BASC-2 results because Parent's and Ms. Rivas' responses dramatically differed. She explained that she would have expected the teacher and parent to have better communicated and that, consequently, their respective impressions of Student's conduct would be more consistent. This opinion was inconsistent with the purpose of administering the BASC-2.

LEGAL CONCLUSIONS

1. District contends that its triennial January 2013 psychoeducational assessment, January 2013 SAL assessment, and November 2012 OT assessment, met all of the requirements under the Individuals with Disabilities in Education Act (IDEA) and were appropriate. Therefore, Student was not entitled to IEE's at District expense. Student contends that the assessments were fraught with errors and deviations from protocol, rendering the standardized assessments invalid. Student further contends that the District assessors minimized such errors, including failing to properly interpret the assessments, observations, and interviews. Student also asserts that the assessments failed to evaluate Student in all areas of suspected disability; that is, in visual processing.

As will be discussed below, District's assessments met all the legal requirements under the IDEA and were appropriate. Student was not entitled to IEE's funded by District.

APPLICABLE LAW

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

3. Before any action is taken with respect to the initial placement of a child with special needs, an assessment of the pupil's educational needs shall be conducted. (Ed. Code, § 56320.) The determination of what tests are required is made 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/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).)

4. The IDEA and related California law require a school district to conduct a reevaluation of each child who is eligible for special education at last once every three years. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(a)(2006)¹¹; Ed. Code, § 56381, subd. (a).) The purpose of a reassessment is to determine: continued eligibility for special education and related services; present levels of academic achievement; functional performance; current educational needs; and any needed modifications to a student's IEP program to enable the student to progress on goals and participate in the curriculum. (Ed. Code, §56381, subd. (a); see also 34 C.F.R. §§ 300.304(c)(2) & (c)(4).) This reevaluation must be designed to assess the student's educational or related services'

¹¹ All references to the Code of Federal Regulations are to the 2006 version unless otherwise stated.

needs, including improved academic achievement and functional performance. (20 U.S.C. § 1414(a)(2)(A)(i) & (b)(3)(C); 34 C.F.R. §§ 300.303(a)(1), 300.304(c)(6), 300.305(a)(2)(iii); Ed. Code, §56381, subd. (b)(2).)

5. 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.)

6. 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).)

7. Moreover, psychological assessments, including individually administered tests of intellectual or emotional functioning, must be administered by a credentialed school psychologist. (Ed. Code, §§ 56320, subd.(b)(3) and 56324.) Assessments must be conducted by persons competent to perform assessments, as determined by the school district, county office, or special education local plan area. (Ed. Code, § 56322.)

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), and the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

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 independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2) ; see also Ed. Code, § 56329, subd. (c) [providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

10. A student is eligible in California for special education and related services under the category of autistic-like behaviors if, among other things, he “exhibits any combination of the following autistic-like behaviors, to include but not limited to:

- (1) An inability to use oral language for appropriate communication.
- (2) A history of extreme withdrawal or relating to people inappropriately and continued impairment in social interaction from infancy through early childhood.
- (3) An obsession to maintain sameness.
- (4) Extreme preoccupation with objects or inappropriate use of objects or both.
- (5) Extreme resistance to controls.
- (6) Displays peculiar motoric mannerisms and motility patterns.
- (7) Self-stimulating, ritualistic behavior.”

(5 Cal. Code Regs., § 3030, subd. (g).)

11. A child who demonstrates difficulty understanding or using spoken language under specified criteria and to such an extent that it adversely affects his or her educational performance, which cannot be corrected without special education

services, has a language or speech disorder that is eligible for special education services. (Ed. Code, § 56333.) The criteria includes: (1) Articulation disorder: the child displays reduced intelligibility or an inability to use the speech mechanism which significantly interferes with communication and attracts adverse attention; (2) Abnormal voice: a child has an abnormal voice which was characterized by persistent, defective voice quality, pitch, or loudness; (3) Fluency disorders: a child has a fluency disorder when the flow of verbal expression including rate and rhythm adversely affects communication between the pupil and listener; (4) Language disorder: the pupil has an expressive or receptive language disorder, in pertinent part, when he or she scores at least 1.5 standard deviations below the mean, or below the seventh percentile, for his or her chronological age or developmental level, on two or more standardized tests in one or more of the following areas of language development: morphology, syntax, semantics, or pragmatics. (Cal. Code Regs., tit. 5, § 3030, subd. (c); Ed Code, § 56333.)

12. A pupil is eligible under the category of OHI if the pupil has limited strength, vitality or alertness, due to chronic or acute health problems, which are not temporary in nature and adversely affect a pupil's educational performance. (Cal. Code Regs., tit. 5, § 3030, subd. (f).) The IDEA criteria for eligibility in the category of OHI specify that limited alertness includes a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems, such as ADHD. (34 C.F.R. § 300.8(c)(9).) For purposes of the IDEA, a "child with a disability" is one who, because of the disability, needs instruction, services, or both which cannot be provided with modification of the regular school program. (20 U.S.C. § 1401(3) (A); Ed. Code § 56026, subd. (a), (b).)

ISSUE 1: APPROPRIATENESS OF THE TRIENNIAL PSYCHOEDUCATIONAL ASSESSMENT

13. District met its burden of proof in establishing that its January 2013 psychoeducational assessment met all IDEA and California criteria and was appropriate.

The District followed all required procedures prior to assessment, including the preparation and delivery of proposed assessments plans and obtaining Mother's permission to proceed with the assessments. District conducted additional tests as requested by Mother. The assessments were conducted properly and were completed and presented to the IEP team in a timely manner.

14. The assessments were conducted by qualified persons who were knowledgeable about Student and his areas of suspected disability. Mr. Day, Ms. Torres, and Ms. Culley had the education, background, authorization, and experience to administer and interpret the assessment instruments and to interpret the results. Each of them used a variety of assessment tool including personal observation, standardized tests, staff and Parent surveys, review of records, and academic information. None of them relied upon a single measure to determine Student's eligibility. The evidence established that the assessment team utilized multiple and validated assessment tools and that the selected tools generally assessed Student in all areas of suspected disability. All of the assessment methods and standardized tests used sound instruments to assess cognitive and behavioral factors as well as physical and developmental factors with respect to Student's suspected disabilities of autistic-like behaviors, ADHD and SAL. All tests used were valid, reliable, and consistent with the publisher's protocol. All assessment instruments were administered without racial or cultural discrimination and in Student's language.

15. Mr. Day, Ms. Torres, Ms. Culley, and nurse Sawyer prepared and provided well documented reports to Parent and the IEP team. The comprehensive psychoeducational report, as well as the health, SAL, and OT reports, set forth the observations of the assessors, the results of the standardized tests, the relationship of the assessments to Student's academic and social functioning, and educationally

relevant health and development findings. Recommendations for special education services and supports were made and the basis for this determination was explained.

16. Student provided no evidence that convincingly demonstrated any of the utilized standardized tests were not valid or were not correctly interpreted. No evidence indicated there were any areas of Student's academic performance which were not addressed in Ms. Torres' assessments. Mr. Day, Ms. Torres, and Ms. Culley carefully and thoughtfully responded to persistent challenging questions from Student's advocate and to the criticisms of Student's expert.

17. Generally, Mr. Day's testimony demonstrated that he possessed extensive understanding regarding the administration of the WJ-III-Cog, the TAPS-3, and the other standardized tests. His testimony was knowledgeable and persuasive. Student provided no evidence that convincingly indicated the standardized tests, administered by Mr. Day, were not valid. He administered, scored, interpreted, and reported the tests in accordance with the publisher's protocols.

18. In evaluating Student's academic achievement, Ms. Torres administered the Brigance II and the WJ-III-Ach and reviewed Student's performance on state and District assessments. In testifying, Ms. Torres demonstrated a thorough knowledge of the standardized tests. Even when her skills were challenged on cross-examination, she calmly and carefully responded, explaining that there were no actual deviations from the publisher's protocols. She credibly responded to Student's assertions, persuasively demonstrating the appropriateness of the testing. The evidence supports the finding that she administered, scored, and interpreted the tests in accordance with their protocols. She comprehensively and properly reported the test results and findings.

19. Mr. Day and Ms. Culley thoroughly evaluated Student's social adaptive behavior using multiple tools and standardized instruments. Mr. Day interviewed Mother and Ms. Rivas, who both completed the scales or questionnaires for the BASC-2,

the Conners-3, and the GARS-2. Ms. Culley gave the SSIS, which identified and classified pro-social and problem behaviors, which could aid intervention plan design. Mr. Day and Ms. Culley scored and comprehensively reported the results, which were used in the team's summary recommendations.

20. Mother's response to surveys described Student's behaviors, strengths, and difficulties differently than District witnesses' observations and testing. However, this does not demonstrate that District assessments were inadequate or inappropriate. The assessment team determined that Student presented very differently in the school setting. Mr. Day explained that Student's behaviors were not a problem in the school setting and did not interfere with his ability to access and benefit from the curriculum. He believed that the scheduled structure of the school environment, in the classroom and on the playground, contributed to the difference between Mother's and teacher's responses. He and the other team members determined that the scale responses on all three tests, as well as their personal observations and experience with Student, indicated that Student's ADHD behaviors, without appropriate supports, interfered with Student's ability to access his education.

21. Student argues that District failed to assess Student for visual perception disorder. Yet, the record establishes that the assessment team employed multiple instruments, as well as personal observations of and experience with Student, in evaluating his visual perception. Ms. Torres conducted the MVPT-R; Student scored within the average to high-average range in five areas of visual perception. Student's performance, as well as Ms. Torres' personal experience as Student's RSP, indicated Student's visual perception was not a concern. Mr. Day administered the Bender Gestalt-2, which measured visual motor integration skills; Student scored in the average range. Mr. Day also used the Koppitz-2 to score the Bender Gestalt-2, providing a developmental objective measure. Again, Student's visual motor skills were in the

average range. Student's overall TVPS-3 performance indicated that Student's visual perceptual skills were within the average range and, therefore, did not warrant further assessment.

22. Student's performance on the visual perception components of other testing instruments further indicated that visual processing was not a concern. For example, on the WJ-III-Cog, there were visual tasks which required Student to categorize and find objects, such as the concept formation subtest of fluid reasoning, which required Student to find the rules of a visual representation. Student was in the high average range, again demonstrating Student had adequate visual perception skills. The visual components of the OT evaluation further confirmed that Student did not demonstrate visual perceptual weaknesses. Mr. Day, Ms. Torres, and occupational therapist Ms. Shelton all agreed that Student did not need further testing for visual processing because it was not a concern. District appropriately assessed Student's visual processing.

23. Ms. Patterson's proffered expert opinion as to the validity of District's testing and the appropriateness of the assessments was unpersuasive. Her assertion that the one, formal class she took on assessment procedure and practice qualified her to administer all standardized instruments and, therefore, qualified her to render expert opinion on the validity of District testing, was not credible. Other than the Brigance II, Ms. Patterson never administered any of the remaining 17 standardized tests. She had not received training for these instruments and, further, had never read the publishers' instruction manuals. Her testimony that certain scales were invalid was based upon phone conversations she allegedly had with the test publisher. Ms. Patterson did not qualify as an expert in the administration, scoring, and interpretation of the standardized instruments used by the District in the triennial assessment of Student.

24. Ms. Patterson questioned the legitimacy of the BASC-2 results because Mother's and Ms. Rivas' responses dramatically differed. She would have expected the parent and teacher to have better communicated and that, consequently, their respective impressions of Student's conduct would be more consistent. This opinion was inconsistent with the BASC-2 purpose, which was to obtain the responders' evaluation of Student's behaviors in the environment in which they observe the child, further demonstrating a lack of experience in BASC-2 administration and interpretation.

25. The psychoeducational assessment team collaborated in discussing the results of their observations and testing. They considered and analyzed which special education eligibility categories would apply to Student, reviewing their assessments within the applicable eligibility legal framework. They recommended that Student did not meet the eligibility requirements for autistic-like behavior but did qualify for OHI eligibility, due to Student's ADHD impairment. They summarized their results and recommendation in the written January 2013 report, which they presented to the triennial IEP team.

26. Mother requested a psychoeducational IEE on June 10, 2013 and the District timely responded in writing, stating that the assessment was valid, met all legal requirements, and was legally appropriate. Thereafter, District timely filed this due process request.

27. The District has met its burden of establishing that its January 2013 triennial psychoeducational assessment was legally appropriate. District need not provide Student with an IEE at public expense.

THE JANUARY 2013 TRIENNIAL SPEECH AND LANGUAGE ASSESSMENT

28. District met its burden of proof in establishing that its January 2013 SAL assessment met all IDEA and California criteria and was appropriate. The District followed all required procedures prior to assessment, including the preparation and

delivery of the proposed assessment plan, obtaining Mother's permission to proceed. District conducted the assessment in an orderly fashion and the results and recommendations were presented to the IEP team in a timely manner.

29. Qualified personnel properly conducted the assessment. Ms. Boyer's education, training, knowledge, and experience as a licensed and credentialed SLP, qualified her to assess Student's SAL needs, including the administration of standardized instruments. In addition, she knew Student before the assessments.

30. The evidence established that Ms. Boyer used multiple measures to assess Student in all suspected areas of SAL needs. The standardized tests were validated for the purposes used and were not discriminatory. She personally administered the standardized instruments, for which she had been trained. She followed and did not deviate from the test publishers' instructions. She used multiple assessment tools in addition to standardized tests including a speech sample and SAL questionnaires to Mother, Ms. Rivas, and Ms. Torres. Though Mother had concerns with some speech sounds, the teachers noted no areas of concern and did not observe others having difficulty understanding Student. Ms. Boyer concluded speech production and intelligibility did not affect Student's ability to interact with peers and his functioning in the classroom.

31. The evidence showed that Ms. Boyer summarized her findings for the January 2013 multidisciplinary report. She recommended that Student was not eligible for special education pursuant to Education Code, section 56333, because Student did not have a fluency disorder which affected his communication. Further, Student did not have articulation or language performance that was not significantly below his peers, which adversely affected his educational performance. Her SAL evaluation concluded that Student did not present with a language, speech, or fluency. She included the

results of her testing and evaluation in the SAL portion of the January 2013 multidisciplinary team report, which was provided and present to the triennial IEP team.

32. Student presented no evidence that Ms. Boyer did not properly administrate or interpret the results of the standardized instruments or that the informal clinical assessments were contrary to standard evaluative practices. Ms. Boyer convincingly testified that she evaluated Student in all suspected areas of SAL deficits, having demonstrated a keen understanding of the standardized instruments, the clinical observations, and the applicable legal eligibility standards.

33. The District met its burden of establishing that its January 2013 triennial SAL assessment was legally appropriate. District need not provide Student with an IEE at public expense.

THE TRIENNIAL OCCUPATIONAL THERAPY ASSESSMENT

34. District met its burden of proof in establishing that its triennial OT assessment met all IDEA and California criteria and was appropriate. The District followed all required procedures prior to assessment, including the preparation and delivery of proposed assessments plans and obtaining Mother's permission to proceed with the assessment. The assessment was properly conducted and was completed and presented to the IEP team in a timely manner.

35. District contracted to have Ms. Shelton perform the OT assessment. Ms. Shelton's education, training, knowledge, and experience qualified her to assess Student's OT needs, including the use of informal assessment tools and standardized instruments. Ms. Shelton used multiple measures to assess Student's OT needs. She administered three standardized tests – the BOT2, the Beery VMI, and the SIPT. The evidence established that the standardized tests were validated for the purposes used and were not discriminatory, that Ms. Shelton was trained in administering the standardized instruments, and that she followed and did not deviate from the test

publishers' instructions. She included the results of her testing and evaluation in her two OT reports, one of which was for the SIPT only.

36. Ms. Shelton conducted thorough OT clinical observations and evaluations of Student. She assessed Student's organization of behaviors, neuromuscular status, proprioceptive functions, tactile processing, motor planning, gross motor skills, fine motor skills, visual motor skills, and self-care skills. She found Student's areas of strength were in gross motor skills, motor planning, self-care skills, fine motor skills, and sensory processing as related to school activities. Student's area of concern, as related to school performance, was his self-regulation when presented with difficult tasks.

37. She recommended OT consultative services, noting that Student was able to participate in his current educational program. She suggested OT intervention using developmental and neurobiological approaches. She discussed with the assessment and IEP teams the development of a sensory diet for Student, to be used throughout his day across all of his environments. Teachers, aide, and parent could also address Student's difficulty with letter formation throughout the day.

38. Ms. Shelton summarized her assessment, findings, and recommendations in two written reports dated November 19 and 23, 2012. The evidence indicated that the reports were provided to and considered by the triennial IEP team.

39. Student presented no evidence that Ms. Shelton did not properly administrate or interpret the results of the standardized instruments or that her clinical observations and assessments were contrary to standard OT evaluative practices. Ms. Shelton convincingly testified that she evaluated Student in all suspected areas of OT. She exhibited a clear understanding of the standardized instruments. She knowledgeably described her clinical assessments, identifying Student's unique strengths and struggles. When questioned about some of the more problematic

assessment models and results, she patiently and lucidly explained the concepts, illustrating with examples. Her presentation was thoughtful and measured.

40. The District has met its burden of establishing that its November 2012 triennial OT assessment was legally appropriate. District need not provide Student with an IEE at public expense.

ORDER

1. District's triennial psychoeducational assessment met all of the requirements under the IDEA and was appropriate. District need not provide Student a psychoeducational IEE at public expense.

2. District's triennial speech and language assessment met all of the requirements under the IDEA and was appropriate. District need not provide Student a speech and language IEE at public expense.

3. District's triennial occupational therapy assessment of November 19 and 23, 2012, met all of the requirements under the IDEA and was appropriate. District need not provide Student an occupational therapy IEE at public expense.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all three issues.

RIGHT TO APPEAL THIS DECISION

This was a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

DATED: January 10, 2014

_____/s/_____

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearing