

BEFORE THE
SPECIAL EDUCATION DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIPON UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2007020741

NOTICE: This decision has been UPHELD by the United States District Court. Click [here](#) to view the USDC's decision.

DECISION

Administrative Law Judge (ALJ) John A. Thawley, State of California, Office of Administrative Hearings, Special Education Division (OAH), heard this matter on May 29 and 30, 2007, in Stockton, California.

Ripon Unified School District (District) was represented at hearing by Attorney Patrick Balucan. District Special Education Manager Camille Taylor was also present.

Student was represented at hearing by Attorneys Tamara Loughrey and Christopher Ide-Don. Student's mother (Mother) and Advocate Shirley Nutt were also present.

On February 26, 2007, District filed a request for a due process hearing (Complaint)¹ regarding Student. At the hearing, oral and documentary evidence were received. The record was held open for the submission of closing briefs, which were timely filed on June 11, 2007. The record closed and the matter was submitted on June 11, 2007.

¹ A request for a due process hearing under Education Code, section 56502, is the due process complaint notice required under title 20, United States Code, section 1415(b)(7)(A). Hereinafter, all statutory references will be to title 20 of the United States Code, unless specifically noted otherwise (also referred to by its title, the Individuals with Disabilities Education Improvement Act (IDEIA)).

ISSUES

1. Was the District's fall 2006 psychoeducational assessment of Student appropriate?
2. Was the District's fall 2006 speech and language (SL) assessment of Student appropriate?

CONTENTIONS OF THE PARTIES

In the fall of 2006, District conducted psychoeducational and SL assessments of Student. On December 18, 2006, the District held an individualized education plan (IEP) team meeting to conduct the triennial review. The IEP team meeting was continued to December 21, 2006. Mother disagreed with the psychoeducational and SL assessments, and requested an Independent Educational Evaluation (IEE) at District expense. District denied Mother's request. District filed this action, and asserts that its assessments were appropriate because the assessments met the requirements of Education Code section 56320.

Student claims that, as to the District's psychoeducational assessment, the Functional Behavioral Analysis (FBA) was incomplete and inaccurate regarding Student's behaviors during the last two years. Student also argues that, when school psychologist Sean Henry used the Childhood Autism Rating Scale (CARS), he inappropriately relied on a single test instrument to determine that Student was not eligible for special education and related services due to autistic-like behaviors. Student also notes that Mr. Henry failed to conduct the companion assessment, the Gilliam Autism Rating Scale (GARS), which is given to parents and teachers. Student claims that Mr. Henry does not possess the requisite credentials to make an ultimate determination that Student meets the criteria of autistic-like behaviors for special education eligibility. Student asserts that the psychoeducational assessment was insufficient because the District offered to reimburse Student for an IEE.

Student claims that the District's SL assessment was inappropriate because some of the observations in the report are inconsistent and at times contradictory. Student also claims that the District's SL assessment is inaccurate or inflated his abilities because he had been working with a system that was similar to one of the tests used for the SL assessment.

Student also attempts to raise claims that are irrelevant. Student asserts that the District's Behavioral Support Plan (BSP) does not address all of the behaviors that Mr. Henry reported he had observed, and does not provide strategies to assist the Student in replacing inappropriate behaviors with appropriate behaviors. However, that contention is irrelevant because, as noted above, the only two issues in this matter have to do with District's psychoeducational and SL assessments of Student. The BSP is a product of the IEP team meeting, and as such is not part of the psychoeducational assessment. Student also contended that District's SL assessment was inappropriate because the extent of the collaboration between Judi Gladen and Sharon Filippi, District SL pathologists, was

unknown. However, that contention is also irrelevant because the applicable law does not require a school district to provide detail as to the role and responsibilities of each assessor as to each portion of each assessment.

FACTUAL FINDINGS

Background

1. Student is nine years old, and lives within the boundaries of District with each of his parents, who share custody of him. He is currently attending the fourth grade at Ripon Elementary School, a public school within District boundaries. In December 2004, Student was found eligible for special education and related services under the category of Other Health Impaired (OHI), due to attention deficit hyperactivity disorder (ADHD), tics, and dysgraphia. After a county mental health agency assessment, individual therapy sessions were added to Student's IEP on March 10, 2005.

District's Fall 2006 Psychoeducational Reassessment

2. As described in Legal Conclusions 1 through 7, a school district's reassessment of a pupil must meet the standards applicable to initial assessments. Specifically, a school district must assess pupils in all areas of suspected disability, using appropriate, technically-sound assessment tools that are valid and reliable. A school district cannot use any one measure as the sole criterion for determining whether a pupil is eligible for special education services. Personnel who administer assessments must be knowledgeable about the assessment tools and the pupil's suspected disability. A school district must administer assessments in the language and form most likely to yield accurate information about what a pupil knows and can do academically, developmentally, and functionally, unless it is not feasible.

3. Student does not allege that the District selected tests that were improperly discriminatory, were improperly used or invalid for the purpose for which they were used, or were improperly administered in a language that was not appropriate for Student.

4. On September 6, 2006, the District received a facsimile transmission of the report of David Bruce Rose, a licensed clinical psychologist, diagnosing Student with autism.

5. On September 15, 2006, Student's IEP team met to discuss Dr. Rose's report. The IEP team developed an assessment plan that included a FBA, as requested by Mother, as well as an early triennial assessment to determine Student's unique needs in light of the private assessment, and the new information about Student from a District pragmatic language assessment underway at that time.

6. Sean Henry, a District school psychologist, received a bachelor's degree from California State University, Fresno. He completed a three-year school psychologist program

that was approved by the National Association of School Psychologists and received a Master of Science degree in Psychology in spring 2001. During his education, Mr. Henry gained experience working with school psychologists in several school districts. After graduation, Mr. Henry worked as a school psychologist intern for a year in another district. He earned a Pupil, Personnel and Services (PPS) credential, which allows him to perform a variety of duties in school settings from kindergarten through twelfth grade, including conducting assessments and designing programs. Then, Mr. Henry worked as a school psychologist in another district for four years before joining the District as a school psychologist for the 2005-2006 school year (SY). Mr. Henry has the appropriate education, experience, and expertise to conduct a psychological assessment of Student, and to make recommendations to the IEP team regarding Student's eligibility for special education and related services under the categories of emotional disturbance and autistic-like behaviors.

7. Mr. Henry conducted the cognitive and FBA portions of the District's psychoeducational assessment of Student. As to the cognitive portion, Mr. Henry reviewed Student's school records, including Student's grades, as well as reports from Student's parents and teachers, and past assessments, including Dr. Rose's report and the December 2004 psycho-educational assessment done by Bobbie Ables-Smith, a school psychologist who was Mr. Henry's predecessor. Mr. Henry administered to Student the Wechsler Intelligence Scale for Children, Fourth Edition (WISC IV), the Developmental Test of Visual Motor Integration (VMI), the Behavior Assessment for Children (BASC), including the Self Report, the Conners ADHD Rating Scale (Conners), the Behavior Rating Inventory of Executive Function (BRIEF), and the Childhood Autism Rating Scale (CARS).

8. Student's scores on the WISC IV and VMI were generally within the average range. Student had a full-scale IQ of 102. Mr. Henry noted that Student's VMI scores were consistent with an occupational therapy assessment done in spring 2006. Mr. Henry was aware of Student's attention problems, and had observed the level of Student's disorganization in the classroom. As a result, to rate how Student goes about doing things, Mr. Henry administered the BRIEF, which involved questionnaires completed by Mother, Student's general education (GE) teacher, and Student. Student's BRIEF scores indicated "extreme difficulties" in almost every area. On the BASC, Mother and Student's GE and special education (SE) teachers indicated at-risk or clinically-significant scores in a number of areas. The most significant reported problems were depression, which was consistent with Student's receipt of counseling services; attention, including hyperactivity, which was consistent with Student's ADHD diagnosis; and behavior symptoms.

Student's self scores on the BASC indicated clinically-significant problems on two of the three composites: the school maladjustment composite, which indicated a negative attitude toward school and teachers, and the adaptive/personal adjustment composite, which indicated a negative view of himself and his relationships with parents and peers. On the clinical maladjustment composite, Student scored himself at-risk. Student's overall index score on the Conners, which involved ratings from Mother and Student's GE teacher, was well within the clinically-significant range, and is consistent with the BASC scores, Mr.

Henry's observations of Student, and Student's ADHD diagnosis. However, Mr. Henry's CARS scores of Student in 15 different sub-tests indicated that Student was not autistic.

9. Mr. Henry concluded that Student continued to qualify for special education and related services under the OHI category; Student also qualified due to emotional disturbance, but Student did not meet the qualifications for eligibility under the category of autistic-like behaviors.

10. Student's claim that Mr. Henry inappropriately relied solely on the CARS to find that Student did not have autistic-like behaviors is not supported by the evidence. Mr. Henry's psychoeducational assessment included a review of Student's file, observations of Student, and interviews of Student's Mother and GE teacher. In addition, other test instruments used by Mr. Henry, including the BASC and the BRIEF, solicited information from Mother and Student's teachers, and provided additional information as to whether Student exhibited autistic-like behaviors. It is clear that Mr. Henry's finding did not impermissibly rely on a single instrument. Furthermore, since Student had already been found eligible for special education and related services, Mr. Henry's finding as to the lack of autistic-like behaviors was only a finding regarding an additional category of eligibility.

11. Dr. Rose, Student's expert witness, provided some testimony that supported the District's assessments. Dr. Rose was familiar with most of the tests and questionnaires that Mr. Henry used to assess Student. Dr. Rose conceded that the tests were appropriate and within Mr. Henry's scope of practice, and he saw nothing in Mr. Henry's report to indicate that the tests were invalid or that Mr. Henry had violated the protocols in administering the tests. Dr. Rose also conceded that Student's symptom cluster was "problematic" because the underlying problem(s) could be a number of things, or a combination of several things.

12. However, Dr. Rose was surprised at the score Mr. Henry gave to Student on the CARS because, in Dr. Henry's opinion, that score was not consistent with Student's behavior. Dr. Rose opined that Student's behaviors met the definition of autistic-like behaviors both for special education eligibility purposes, and under the more stringent standard of the Diagnostic and Statistical Manual.

13. Nevertheless, the fact that Dr. Rose reached a different conclusion from Mr. Henry does not render Mr. Henry's assessment inappropriate. In addition, Dr. Rose's credibility was diminished by the level of bias he displayed. He was dismissive of Mr. Henry's "level of practice," and testified that the assessments conducted by Mr. Henry were "fairly typical" of what Dr. Rose had "come to expect from school psychologists."

14. Furthermore, the complexity of determining Student's unique needs is illustrated by considering the December 2004 psycho-educational assessment done by Ms. Ables-Smith. Ms. Ables-Smith noted some of the same symptoms and issues as Mr. Henry and Dr. Rose, yet her findings regarding Student's unique needs differed somewhat from those of Mr. Henry and Dr. Rose.

15. As to the academic portion of the District's psychoeducational assessment of Student, Cheryl Ramey, Student's credentialed Resource Specialist Program teacher, earned a bachelor's degree in Learning Disabilities, and received learning specialist and multiple-subject credentials from the University of the Pacific. Ms. Ramey has almost 25 years of teaching experience, including three years working with Student. Ms. Ramey has the appropriate education, experience, and expertise to academically assess Student.

16. Ms. Ramey attended a parent-teacher conference with Mother before assessing Student. She also completed the BASC questionnaire that she received from Mr. Henry. On October 24, 2006, Ms. Ramey tested Student with the Woodcock Johnson Tests of Achievement, Third Edition (WJ III), including eleven standard tests and five supplemental tests. Student scored below average only in the Writing Fluency standard test. Student scored Superior in two areas, and High-Average in numerous other areas. As a result, Ms. Ramey concluded that Student has the skills to do well in school. Ms. Ramey's academic assessment became part of the psychoeducational assessment of Student.

17. As to the FBA and BSP portions of the psychoeducational assessment, if a pupil's behavior impedes his or her learning, or the learning of other pupils, an IEP team must consider, when appropriate, strategies to address the pupil's behavior, including positive behavioral interventions, strategies, and supports. The resulting strategies become a BSP, which may be incorporated into an IEP. For serious behavioral problems, including pervasive or maladaptive behaviors for which instructional/behavioral approaches specified in the pupil's IEP have been found to be ineffective, a school district must conduct a FAA, which results in a behavior intervention plan (BIP). Hence, the behavior intervention process is a continuum, from informal behavior interventions, to a FBA that results in a BSP that may be part of the pupil's IEP, to a FAA resulting in a BIP.

18. At an IEP team meeting on August 11, 2006, the IEP team indicated that Student's behavior did not impede his learning, or the learning of other pupils. Mother signed the IEP.

19. However, after the September 15, 2006 IEP team meeting, Mr. Henry conducted a FBA of Student, based on Mother's request. The FBA is included in Mr. Henry's psychoeducational report, dated December 15, 2006.

20. Mr. Henry has the education, experience, and expertise, including certification as a Behavior Intervention Case Manager, to conduct a FBA. As part of Student's FBA, Mr. Henry reviewed the relevant portions of Student's educational records, cumulative file, and special education file. He also considered the September 2006 report from Dr. Rose, as well as Ms. Ables-Smith's December 2004 psycho-educational report. Mr. Henry interviewed Student's Mother, who shared her concerns about, among other things, Student's difficulties with completing school work, and Student's social skills. Mr. Henry also interviewed Student's SE teacher, who shared her belief that Student had many skills but exhibited inappropriate behaviors, including attempts to get the attention of his classmates.

21. Mr. Henry reviewed Student's disciplinary history. Disciplinary referrals, which involve a pupil being sent to the school office, are noted in a computer database, unlike incidents that do not involve a pupil being sent to the school office. The principal told Mr. Henry that, during the 2005-2006 SY, Student had caused classroom disruptions but had not been sent to the office. This is supported by Student's third grade progress report (the 2005-2006 SY), where Student's non-academic ratings were Satisfactory Minus or higher for 35 out of 40 possible times (10 areas for the four quarters of the school year).

22. As a result, Mr. Henry's summary of Student's discipline history consists of disciplinary referrals from August 11, 2006, through November 17, 2006. During this period of time, Mr. Henry's report notes 15 behavior incidents on 11 different days. The last disciplinary referral noted by Mr. Henry was for an incident of inappropriate touching of a female pupil during recess, which resulted in a two-day suspension.

23. Mr. Henry decided to look at four areas of Student's behavior: initiation and work completion on class assignments, behaviors occurring associated with writing difficulties, distracting and non-related academic behaviors in the classroom, and peer interactions inside the classroom and on the playground.

24. Mr. Henry's report contains almost seven pages of detailed information about Student's behaviors, based on Mr. Henry's observations of Student in the classroom, at lunch, and during recess, on seven different dates. Mr. Henry also analyzed Student's behaviors and noted the apparent reasons for those behaviors. Mr. Henry concluded the FBA by recommending that the IEP team develop a BSP "to address moderate behavior problems that are interfering with learning."

25. The District held an IEP team meeting on December 18, 2006, which continued on December 21, 2006, and developed an IEP that included a proposed BSP. The BSP included observations and analyses of Student's problematic behaviors, and interventions designed to remove Student's need to use the problem behaviors, and to help Student adopt or accept replacement behaviors that would meet his needs. Mother did not consent to the BSP.

26. Sherry Worcester, a board-certified behavior analyst in Applied Behavior Analysis (ABA) and Student's expert witness in the area of the FBA and BSP, opined that the FBA and BSP were insufficient or inappropriate because, among other things, the documents did not include specific antecedent and consequence conditions or appropriate functions or appropriate alternative behaviors. In addition, Ms. Worcester referred to Student's kindergarten progress report to point out that Student had displayed problematic behaviors for some time.

27. Ms. Worcester's testimony was not persuasive. First, as noted in Legal Conclusion 7, the law does not define the components of a FBA. Second, in forming her opinions, Ms. Worcester only met with Student for about two and a half to three hours, about 10 days before the hearing. Third, Ms. Worcester never observed Student in a school setting,

and did not speak with any District personnel. Furthermore, Ms. Worcester's reference to Student's kindergarten year, to attempt to illustrate the length of time that Student had engaged in problematic behaviors, does not provide an accurate picture. Student had a student study team during his first grade year, the 2003-2004 SY. During Student's second grade year, the 2004-2005 SY, Student was found eligible for special education and related services and began to receive counseling. Hence, Ms. Worcester relied on a period of time before Student began receiving special education and related services, and did not consider the improvement in his behavior from the second grade to the third grade.

28. The District's psychoeducational assessment of Student was appropriate. Mr. Henry appropriately performed the cognitive testing and FBA of Student, and reached appropriate conclusions. Ms. Ramey appropriately performed academic testing of Student, and reached appropriate conclusions.

District's Fall 2006 Speech and Language Assessment

29. Student does not allege that the District improperly relied on a single test instrument or administered the tests in a language that was not appropriate for Student. Student does not assert that the District selected test instruments that were improperly discriminatory, or that the test instruments selected by the District were improperly used or were invalid for the purpose for which they were used.

30. At an IEP team meeting on August 11, 2006, the IEP team referred Student for an assessment due to concerns about his pragmatic speech (social language). The IEP team had no other concerns regarding Student's SL abilities.

31. Judith Gladen, a credentialed SL pathologist for the District, earned a bachelor's degree in speech therapy, and a Master of Science degree in SL pathology, which included classes on how to administer tests. Ms. Gladen has over 17 years of experience as a SL pathologist. Ms. Gladen has the appropriate education, experience, and expertise to conduct a SL assessment of Student.

32. In about October 2006, as part of Ms. Gladen's pragmatic SL assessment of Student, Ms. Gladen reviewed the WJ III assessment of Student done by Ms. Ramey, interviewed Ms. Ramey and Student's GE teacher, and observed Student in his classroom. Ms. Gladen administered the pragmatic portions of the Diagnostic Evaluation of Language Variation (DELV) and the Comprehensive Assessment of Spoken Language (CASL). She also used the Children's Communication Checklist 2 (CCC-2), the Clinical Evaluation of Language Fundamentals 4 (CELF-4), and the Social Thinking Language Sample.

33. Students scored 23 out of 24 on the DELV, which indicated that pragmatics was a strength for Student. On the CASL, Student scored in the 34th percentile, which was within the normal limits of 25 percent to 75 percent. However, the scoring of Student by each of his parents on the CCC-2 indicated the possibility that Student may be on the autistic

spectrum. Nevertheless, the scoring of Student by his teacher on the CELF-4 indicated that he met the criteria for appropriate pragmatic development.

34. While the test and questionnaire scores supplied some information about Student, there was a need to know how Student applied his pragmatic SL knowledge. Ms. Gladen observed Student on the playground, during which time Student got into three physical altercations with other male pupils. However, Ms. Gladen also observed that Student spoke in a “conversational, not argumentative” manner with one of the two male pupils with whom he walked back to the classroom at the end of the recess period. Ms. Gladen examined Student’s peer interaction by conducting a session with Student and a peer. Ms. Gladen reported, “The two boys carried on a friendly give-and-take conversation . . . [and] were observed to engage in friendly banter.” When Ms. Gladen gave the two boys a game to play together, so that she could evaluate Student’s cooperative play, the boys worked together to quickly achieve the objective of the game. “[Student] was relaxed, interactive, and displayed no inappropriate behavior at any time.”

35. Sharon Filippi, a licensed and credentialed speech and language pathologist for the District, earned a bachelor’s degree in SL, and a Master’s degree in SL pathology. Ms. Filippi has over 12 years of experience as a SL pathologist. Ms. Filippi has the appropriate education, experience, and expertise to conduct a SL assessment of Student.

36. Ms. Filippi reviewed the results of Ms. Gladen’s testing and assessment of Student. Ms. Filippi observed Student for about 20 to 30 minutes in the classroom, during which time she noticed that Student was inconsistent with his application of social skills, particularly as to problem-solving.

37. Ms. Gladen and Ms. Filippi discussed the results of Ms. Gladen’s assessment of Student, including the questionnaire scores, as well as their observations of Student. They collaborated in the writing of the report of Student’s SL assessment, which they both signed.

38. Student’s pragmatic SL scores generally indicated that he was within the normal range. However, as noted by Ms. Gladen, each test is static, so any pupil taking the test has time to think about a response. Student “demonstrated inconsistent social/pragmatic language weaknesses.” Ms. Gladen and Ms. Filippi concluded that Student did not qualify for special education and related services in the area of SL. However, Student demonstrated deficits in the application of social skills. As a result, Ms. Filippi recommended that, during the school year, Student should receive 25 SL therapy sessions of 20 minutes each in the area of pragmatics. At the time of the hearing, Ms. Filippi was providing SL therapy in the area of pragmatics to Student for two 30-minute sessions per week.

39. Student contends that District’s SL assessment was inappropriate because some of the observations in the report are inconsistent and at times contradictory. The District witnesses admitted that some of the test and questionnaire scores, as well as the observations, were at times inconsistent or perhaps even contradictory. However, that does not render the assessment inappropriate. Rather, District witnesses established that Student

presents a complex picture where his test scores indicate pragmatic SL knowledge, but observations of Student's application of that knowledge reveal his deficits.

40. Student also contends that the District's SL assessment is inaccurate or inflated his abilities because he had been working with a system that was similar to one of the tests used for the SL assessment. However, as noted above, the District's SL assessment included checklists and observations of Student in a variety of settings. More importantly, it was these portions of the assessment that revealed Student's SL deficits.

41. Theresa Fagundes, a private licensed SL pathologist who testified as Student's SL expert witness, assessed and observed Student in May 2007. Ms. Fagundes essentially confirmed District's findings as to Student's SL abilities. Ms. Fagundes concluded, "While [Student] is able to greet others, make requests, ask for help, and cognitively comprehend what people should do in certain concrete hypothetical situations, his knowledge is only surface level. He lacks the ability to assimilate information from experience, rules, and various social schemas." Ms. Fagundes recommended that Student receive SL therapy from a SL pathologist trained in the areas of social thinking and pragmatics for one 30-minute session per week, which is approximately what Ms. Filippi recommended to the IEP team, and less than what Ms. Filippi was providing to Student at the time of the hearing.

42. The District's SL assessment was appropriate. While the test and questionnaire scores were mixed, Ms. Gladen and Ms. Filippi conducted observations of Student to gain additional information and insight on Student's pragmatic language skills, or lack thereof. Then, they collaborated to write a detailed and thorough report on Student, and presented that report to the IEP team on December 18 and 21, 2006. The IEP team agreed with the recommended SL therapy for Student, and developed SL goals. Mother consented to the SL goals and therapy.

LEGAL CONCLUSIONS

Applicable Law

1. District, as the petitioner, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].)

*Requirements of an Evaluation or Assessment*²

2. 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. (§ 1414(a)(1); 34 C.F.R. § 300.301(a); Ed. Code, § 56320.) The student must be assessed in all areas related to his or her suspected disability. (§ 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4);

² An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

Ed. Code, § 56320, subd. (f).) Areas of suspected disability include, if appropriate, health and development, vision, hearing, language function, general intelligence, academic performance, communicative status, motor abilities, career and vocational abilities and interests, and social and emotional status. (§ 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).)

3. No single measure or assessment may be used as the sole criterion for determining whether the student has a disability or an appropriate educational program. (§ 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2); Ed. Code, § 56320, subd. (e).) Rather, a school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services and the content of the IEP. (§ 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).)

4. Each assessment must: be selected and administered so as not to be racially, culturally, or sexually discriminatory (Ed. Code, § 56320, subd. (a)); be provided in the pupil's native language or mode of communication, unless it is clearly not feasible to do so (*ibid.*); use technically-sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors (§ 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3)); and be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible. (§ 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii); Ed. Code, § 56320, subd. (b)(1).) Assessment materials must be used for purposes for which they are valid and reliable. (§ 1414(b)(3)(A)(iii)); 34 C.F.R. § 300.304(c)(1)(iii); Ed. Code, § 56320, subd. (b)(2).)

5. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools. (§ 1414(b)(3)(A)(iv), (v); 34 C.F.R. § 300.304(c)(1)(iv), (v); Ed. Code, §§ 56320, subd. (a)(3) [tests of intellectual or emotional functioning must be administered by a credentialed school psychologist], 56322 [assessment shall be conducted by persons competent to perform the assessment, as determined by the school district, county office, or special education local plan area]; 56324 [a psychological assessment shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed].) Assessments shall be conducted by persons knowledgeable of the student's disability. (Ed. Code, § 56320, subd. (g).)

6. The requirements of initial assessments also apply to reassessments. (Ed. Code, § 56381, subd. (a).) As a result, as part of a reassessment, the IEP team must review existing evaluations of the student, including information provided by the parents; current classroom-based assessments and observations; and observations by teachers and related service providers. (§ 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1); Ed. Code, §§ 56320, subd. (h), 56381, subd. (a).) The review may be conducted without a meeting. (34 C.F.R. § 300.305(b); Ed. Code, §§ 56320, subd. (h), 56381, subd. (g).) Based on this review, and input from the student's parents, the IEP team and other qualified professionals must identify

what data is needed to determine whether the student continues to have a disability that would qualify the student for special education and related services, the present levels of performance and educational needs of the pupil, whether the pupil continues to need special education and related services, and whether additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP, and to enable the pupil to participate, as appropriate, in the general curriculum. (Ed. Code, § 56381, subd. (b).)

7. In the case of a child whose behavior impedes his or her learning, or the learning of others, when appropriate, the IEP team must consider “strategies, including positive behavioral interventions, strategies, and supports to address that behavior.” (§ 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).) As noted by the comments to the 2006 federal implementing regulations, “[D]ecisions [as to the interventions, supports, and strategies to be implemented] should be made on an individual basis by the child’s IEP team.” (Vol. 71, No. 156, 64 Fed.Reg. 12620 (2006).) California law defines behavioral interventions as the “systematic implementation of procedures that result in lasting positive changes in the individual’s behavior,” including the “design, implementation, and evaluation of individual or group instructional and environmental modifications . . . designed to provide the individual with greater access to a variety of community settings, social contacts and public events; and ensure the individual’s right to placement in the least restrictive environment as outlined in the individual’s IEP.” The IDEA also requires that, in response to certain disciplinary actions, the IEP team must develop or revise a FBA. (§ 1415(k)(1)(F)(i) & (ii); 34 C.F.R. § 300.530(f)(1).) However, while California law provides a definition for a FAA and a BIP (see Cal. Code Regs., tit. 5, §§ 3052, subd. (b), 3001, subd. (f), respectively), no federal or California statutes or regulations have defined a FBA or BSP. In general, the purpose of a FBA is to provide the IEP team with additional information, analysis, and strategies for dealing with problematic behaviors, especially when those behaviors are interfering with a pupil’s learning.

8. An assessment report shall include, in relevant part, a determination whether the student may need special education and related services; the basis for making that determination; the relevant behavior seen during the observation of the student; the relationship of that behavior to the student’s academic and social functioning; and the educationally relevant health, development, and medical findings. (Ed. Code, § 56327.)

Determination of Issues

9. As found in Factual Findings 1 through 28, pursuant to Legal Conclusions 1 through 8, District’s fall 2006 psychoeducational assessment was appropriate. Mr. Henry appropriately performed the cognitive testing of Student, and reached appropriate conclusions. Ms. Ramey appropriately performed the academic testing of Student, and reached appropriate conclusions. Mr. Henry also appropriately performed a FBA, as requested by Mother, including a review of Student’s records and disciplinary history, interviews of Mother and Student’s GE teacher, and observations of Student, to assess the

behavioral problems that Student was exhibiting during the 2006-2007 SY. The IEP team concurred with Mr. Henry's recommendation to develop a BSP.

10. As found in Factual Findings 29 through 41, pursuant to Legal Conclusions 1 through 6 and 8, District's fall 2006 SL assessment was appropriate. While Student's test and questionnaire scores were mixed, Ms. Gladen and Ms. Filippi conducted observations of Student in a variety of settings to gain additional information and insight on Student's pragmatic language skills, or lack thereof. Then they collaborated to write a detailed and thorough report on Student, and presented that report to the IEP team on December 18 and 21, 2006. The IEP team agreed with the recommended SL therapy for Student, and developed SL goals.

ORDER

The District's fall 2006 psychoeducational and SL assessments of Student were appropriate.

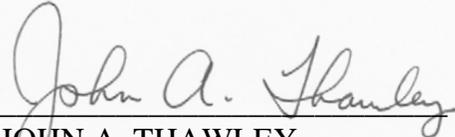
PREVAILING PARTY

Ripon Unified School District prevailed on the two issues for hearing in this case. (Ed. Code, § 56507, subd. (d).)

NOTICE OF APPEAL RIGHTS

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: July 6, 2007



JOHN A. THAWLEY
Administrative Law Judge
Office of Administrative Hearings