

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA ANA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2009010744

DECISION

Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH), State of California, heard this matter in Santa Ana, California, on April 15 and 16, 2009.

Sundee Johnson, Esq., of Atkinson, Andelson, Loya, Ruud & Romo, represented the Santa Ana Unified School District (District). Barbara Cummings, Coordinator of Psychological Services for the District, was present each day as the District's representative.

Advocate Rafael Gutierrez represented Student and her parents. Student's parents were present each day of the hearing. Student appeared for most of the second day of hearing, but did not testify. Interpreter Mariana Demarziani was present each day of hearing to interpret from English to Spanish and Spanish to English for Student's parents.

The District filed its due process hearing request on January 28, 2009. On February 11, 2009, OAH granted the parties' joint request for a continuance. At the hearing, documentary and testimonial evidence were admitted. The parties were given permission to file written closing briefs, which they timely filed on April 23, 2009, at which time the ALJ closed the record and took the matter under submission.

ISSUE

Whether the District's multidisciplinary assessment dated February 27, 2007, and its addendum dated June 10, 2008, appropriately assessed Student in all areas of suspected disability?¹

As a remedy, the District requests a finding that the assessments in question were appropriate and a finding that the District is not required to fund psychoeducational or speech and language independent educational evaluations (IEES) as requested by Student's parents.

CONTENTIONS OF THE PARTIES

The District contends that its triennial multidisciplinary assessment of Student, which it administered in January and February 2007, as well as the addendum multidisciplinary assessment which it administered to Student in June 2008 upon request of Student's parents, appropriately assessed Student in all areas of suspected disability. Therefore, the District contends that Student is not entitled to the IEES requested by her parents.

Student contends that the District's assessments were inappropriate because the District did not administer them to her in Spanish, which is her native language. Student also contends the District should not have administered the triennial assessments in January and February 2007 because Student was depressed at the time, therefore invalidating the assessment results. Finally, Student contends that the District improperly gave Student's mother (Mother) an English version of the Adaptive Behavior Evaluation Scale-Revised (ABES-R), Home Version, to complete, rather than giving her one in Spanish, as Mother does not read or understand English. Moreover, Student contends that someone other than Mother completed the Home Version of the ABES-R, and that Mother never filled it out herself or otherwise participated in answering the rating questions. Student, therefore, contends that the ABES-R administered to Student is not appropriate. Based on these alleged improprieties in the assessment process, Student contends that the District should be responsible for publicly funding IEES for her.

¹ In its complaint, and at the Prehearing Conference, the District raised as an issue whether its December 1, 2008 health appraisal and medical update of Student were appropriate. However, the District offered no testimony at hearing regarding the health appraisal and medical update, did not offer them into evidence, and does not address them in its closing brief. The ALJ has therefore omitted reference to them in the issue presented and does not address their propriety in this Decision.

FACTUAL FINDINGS

Background

1. Student is a 15-year-old girl who lives within the boundaries of the District and who is presently eligible for special education and related services under the category of mental retardation. Student's previous eligibility classifications included speech and language impaired and specific learning disability in the area of auditory processing. Student's eligibility classification, and placement and services are not at issue in the instant case.²

2. Student's family is from Mexico. Student was born there but came to the United States with her parents in 1999. Student began attending school in California in September 1999, when she was six years old, and has continually attended school here since that time. Spanish is spoken almost exclusively in Student's home. Her parents do not understand or speak English very well. At school, Student is classified as an English-language learner with limited English language proficiency and is taught in an English immersion class. She uses a Spanish instructional assistant in the classroom if she does not understand the English instruction. Student converses at school in Spanish and English, both inside and outside of the classroom. However, Student's instruction is in English, not Spanish, and, as will be more fully discussed below, she understands her lessons in English and answers questions appropriately to meet her academic needs.

3. On January 23, 2007, when Student was 13 and a half years old and in the seventh grade at the District's McFadden Middle School (McFadden), Mother signed an assessment plan, giving the District permission to conduct a triennial assessment of Student. The assessment plan Mother signed was in Spanish. In her closing brief, Student for the first time contends that no where in the plan does the District state that it would administer the assessments to Student in English, and that in fact, the plan given to Mother states that the District would administer the assessments to Student in Spanish or with the aid of an adequate interpreter, and that Mother signed the plan under that belief. However, neither Student nor the District submitted as evidence an English translation of the assessment plan, or verbally translated the assessment plan into English at the hearing. Nor did Mother, or any other witness, testify that the plan states that the District would administer the assessments in Spanish or through an interpreter, or that anyone from the District otherwise stated to Mother that such would be the case. Thus, there is no evidence to support Student's contention in her closing brief that the assessment plan states that the District would specifically assess Student in Spanish and/or with an interpreter, or that Mother believed when she signed the assessment plan that the District would administer the assessments in Spanish or through an interpreter, and only gave her consent based upon that belief.

4. As discussed in more detail below, the District's assessments were completed in February 2007, and detailed in a multidisciplinary assessment report dated February 27,

² Student has raised these issues in a due process complaint she filed in OAH case number 2009040059.

2007. Student's individualized education program (IEP) team, which included Mother and the District assessors, reviewed the report at a meeting the team convened on February 27, 2007, at which time the team developed an IEP for Student. Student's instructional aide, who is bilingual in English and Spanish, attended the IEP meeting and served as a translator for Mother. District staff asked Mother if she had questions about the assessments but she did not. Mother consented to this IEP.

5. After agreeing to the February 27, 2007 IEP, Student's parents began to have concerns that Student might suffer from autism. They communicated their concerns to the District, which agreed to re-assess Student to determine if she met the eligibility criteria for autism and if she needed additional services and/or accommodations in order to access her education. The District conducted additional assessments of Student between April and June 2008. The assessment team reported the results of these additional assessments in an addendum report dated June 10, 2008. The District convened an addendum IEP meeting, also on June 10, 2008, to discuss the results of the assessment. Mother and the school psychologist were both present at the meeting as was Student's bilingual aide, who was present to serve as translator for Mother. Mother was given an opportunity to ask questions and discuss the assessment, through the translator, but did not have many questions. Based upon the assessment results, the IEP team determined that Student did not meet the criteria for special education eligibility under the category of autism.

6. Subsequent to reviewing the report as part of Student's IEP team, Student's parents made a request to the District for IEES in the areas of speech and language and psychoeducational. There is no evidence in the record as to when Student's parents requested the IEES, but there is no dispute that the District denied their request and then, as required by law, filed the instant case to prove that its assessments were appropriate.

Was the District's multidisciplinary triennial assessment dated February 27, 2007, appropriate?

7. The District's multidisciplinary team for Student's triennial assessment was headed by school psychologist Margaret Stratford and included Student's special education teacher Ricky VanHoorebeke, and speech and language therapist Julie Corell. Ms. Stratford also consulted with Lydia Wong, McFadden's school nurse, with regard to Student's medical history and health appraisal.

8. Stratford has worked with the District for over 20 years. She holds a Bachelor of Science degree in psychology and a Master of Arts degree in school psychology. Prior to becoming a school psychologist, Stratford worked as a classroom teacher for 16 years. She is credentialed in California both as a teacher and as a psychologist. Stratford also previously worked as a language development specialist and holds a CLAD credential which

qualified her to teach English language learners.³ Presently, as a school psychologist, Stratford's duties include working directly with students, assessing them, participating as an IEP team member, working with special education and general education teachers to assist them in implementing IEPs, and being a resource for students' behavioral issues. Stratford administers about 80 assessments a year to students.

9. In administering her assessments, Stratford conducted a classroom observation of Student, reviewed Student's records, and administered several standardized tests to Student. For her assessment of Student's cognitive development, Stratford administered the Kaufman Assessment Battery for Children II (KABC-II) and the Comprehensive Test of Nonverbal Intelligence (C-TONI). To assess Student's sensory motor processing, Stratford administered the Beery Developmental Test of Visual Motor Interpretation – Fifth Edition (VMI-5). To assess Student's social/emotional/behavioral development, Stratford administered the Burke's Behavior Rating Scale (BBRS). To assess Student's adaptive behavior and vocational and self-help skills, Stratford administered the Adaptive Behavior Evaluation Scale – Revised (ABES-R), the latter of which consisted of both a school and home version. Based upon Student's status as an English language learner, and her cultural background and experiences formed by having spent her early years in Mexico, Stratford believed that the exclusive use of standardized tests would not be a valid method of assessing Student. Therefore, in addition to standardized tests, Stratford used observations of Student, informal assessments, and interviews with Student's parent and teacher.

10. To test Student's cognitive development, Stratford utilized the KABC-II, which is a standardized test for children aged three to 18. It measures a range of abilities including sequential and simultaneous processing, learning, reasoning and crystallized ability. Stratford administered the test to Student in English. However, Stratford explained that the KABC-II is grounded in two theoretical models: the Cattell-Horn-Carroll psychometric model of broad and narrow abilities and the Luria neuropsychological theory of processing. She explained that the Luria model was developed primarily for English language learners and bilingual children, such as Student, whose backgrounds do not fall into the mainstream. Therefore, because of Student's classification as an English language learner who tended to switch from Spanish to English in conversation, Stratford chose the Luria model of the KABC-II to administer to Student so that any lack of full proficiency in English would not invalidate the testing.

11. During the testing, Stratford noted that Student needed redirection and repetition of instructions. She often delayed responding to questions, gave impulsive responses, and had difficulty finding words. However, Stratford also noted that Student followed the directions given to her, applied thought and effort in responding to questions, maintained adequate eye contact, attempted all tasks requested, asked for clarification as

³ As stated on the website for the California Department of Education, the acronym "CLAD" stands for Crosscultural, Language, and Academic Development. The CLAD credential has been replaced recently by the credential entitled California Teachers of English Learners (CTEL).

needed, conversed freely with Stratford, and responded appropriately to questions during an informal interview.

12. Student contends that Stratford should have administered the KABC-II to Student in Spanish because it is her primary language. However, Stratford indicated that Student had no difficulty understanding her and, had she had any reason to believe that Student did not understand the instructions, she would have used an interpreter. Stratford has administered the KABC-II hundreds of times, is familiar with the language needs of students who are bilingual and English language learners, and was credible in her testimony that she would not have continued administering the KABC-II to Student if she had any reason to believe that Student did not understand the instructions or was otherwise not able to proceed in English. Additionally, the Luria model of the KABC-II that Stratford administered to Student was specifically designed for bilingual and/or English language learners such as Student so that any lack of English proficiency would not affect the test results. Moreover, both Stratford and Student's teacher Ricky VanHoorebeke testified that Student's class instruction is in English and that Student participates fully in her classes. Based on Stratford's education, experience, demeanor and professional knowledge of Student, her testimony regarding the use of the KABC-II specifically for bilingual and/or English language learners such as Student, was credible and was given significant weight.

13. Other than Mother's uncontroverted testimony that Student uses Spanish almost exclusively at home and that she is more comfortable speaking in Spanish than in English at school, Student presented no evidence that she did not understand the KABC-II instructions or was not able to take the test in English. Student presented no evidence that she receives any of her classroom instruction in Spanish, or that she can even read and/or write in Spanish. Furthermore, Student presented no evidence that the assessment results on the KABC-II were invalid because the assessment was administered in English, or presented any evidence that the assessment results would have been different had the test been administered in Spanish.

14. Stratford also administered the C-TONI, to Student. The C-TONI is a standardized assessment of non-verbal problem solving and a measure of intellectual ability that does not rely on verbal directions or responses. It is administered with oral or pantomimed instructions; Stratford pantomimed many of the instructions to Student during the assessment. Stratford administered the test to obtain additional information about Student's cognitive abilities where English language knowledge would not be a factor. For this reason, Stratford believed the C-TONI would be an appropriate assessment for Student. Stratford credibly testified that the fact that Student's scores on the C-TONI were higher than her scores on the KABC-II was typical since the C-TONI is a non-verbal test. Student provided no evidence that her assessment results on the C-TONI would have been different had Stratford administered the test in Spanish.

15. Stratford administered the VMI-5 to Student to obtain a measure of Student's sensory motor processing. Stratford explained that sensory motor processing involves the

transformation of information from visual reception to motor production, a process seen in tasks requiring written work, drawing, copying, and imitative motor activity.

16. The VMI-5 is administered by requiring the student to copy geometric shapes. The shape is displayed in a frame with a blank frame below it in which the student draws her version of what she sees. The drawings start out as simple forms but advance to relatively complex shapes by the end of the assessment. Stratford explained that the VMI-5 is a non-verbal test; therefore, Student's status as an English language learner did not impact the test results. Student provided no evidence that her results on the VMI-5 would have been different had Stratford administered the assessment in Spanish.

17. Stratford assessed Student's social/emotional/behavioral present levels through the use of classroom observations, by having Student's teacher complete the Burke's Behavioral Rating Scale (BBRS), which is a standardized test, and by giving Student's teacher an informal rating scale to prepare regarding Student's observed behaviors in the classroom.

18. Stratford's formal observation of Student coincided with a mathematics lesson. Stratford observed that Student was initially negative about her ability to do the work, but was able to complete a portion of the assignment with encouragement and assistance. Stratford also informally observed Student before the assessment period both in and out of the classroom.

19. Student's teacher, Ricky VanHoorebeke, noted on her informal rating scale that Student needed improvement in the areas of persistence, academic confidence and tolerance. VanHoorebeke noted that Student demonstrated strengths in the areas of being cooperative, in her impulse control, and in her response time. VanHoorebeke also completed the BBRS. The results of her ratings showed that Student had very significant social, emotional, or behavioral concerns in the areas of excessive self-blame and poor academics. VanHoorebeke also rated Student as having significant concerns in the areas of excessive anxiety, poor ego strength, poor intellectuality, poor attention, excessive sense of persecution, and excessive resistance. Student has not raised any issues with regard to the manner in which VanHoorebeke completed her rating scales or with the observations she made of Student.

20. Stratford credibly testified that the KABC-II, the C-TONI, the VMI-5, and the BBRS are all standardized assessment tools and are validated for the purposes for which she used them. Stratford either administered non-verbal assessments to Student, as she did in the case of the C-TONI and VMI-5, or administered a version of the assessment designed to validly assess bilingual and/or English language learner students such as Student, as Stratford did by administering the Luria model of the KABC-II. In each case, the tests and assessment tools she used were not racially, culturally or sexually discriminatory. With the exception of the ABES-R, as discussed below, the tests were administered in accordance with the publisher's instructions. Stratford believed that she had developed a good rapport

with Student and that her test results were valid. She used a variety of tools, tests and observations, and did not rely upon a single procedure in determining Student's needs.

21. Julie Corell, who is a speech and language pathologist (SLP) for the District, administered a speech and language assessment to Student as part of the multidisciplinary triennial assessment in January 2007, based upon the request of Student's parents, who had expressed concerns to the District about Student's oral communication skills.

22. Corell has a Bachelor of Arts and a Master of Arts in communicative disorders. She has been licensed as a speech and language pathologist since 1984. Corell has worked with the District since 1994. Prior to that, she worked in private practice serving children from pre-school through middle school. During that time, she also worked at hospitals serving patients with traumatic brain injuries as well as stroke victims. Her present duties as an SLP with the District include assessing screening and diagnosing communication disorders of students, participating in the development of IEPs, consulting and collaborating with other staff with regard to the provision of speech and language services to students, and providing direct speech and language services to students. Corell has many years of experience assessing students on the autism spectrum and in assessing students with various degrees of mental retardation.

23. Although Corell has never provided direct one-on-one language services to Student, she has informally observed her a large number of times in Student's classroom since Corell provided a 40-minute weekly language lesson to Student and her classmates. She also informally observed Student a couple of times a week outside of the classroom.

24. For her assessment, Corell reviewed Student's records, observed Student, administered standardized assessments to her, and conducted an informal assessment of language samples from Student. In conducting her assessment, Corell was assisted by Chris Santoyo, a District SLP who is bilingual in English and Spanish. Based upon Student's status as an English language learner who speaks Spanish at home and who speaks both English and Spanish at school, Corell decided to administer the speech and language assessments to Student in both English and Spanish. She administered the English versions of the assessments and Santoyo administered the Spanish versions. Because of Student's Spanish language background and her experiences outside of the United States, Corell administered both standardized and alternative assessments to Student. As part of the standardized assessment, Corell and Santoyo administered to Student the Receptive One Word Picture Vocabulary Test (ROWPVT) and the Expressive One Word Picture Vocabulary Test (EOWPVT). The alternative assessment was comprised of teacher interviews, Corell's observations of Student, collection of English and Spanish language samples from Student, and information assessment procedures, in order to get a complete and valid assessment of Student's then-present language abilities and needs. The evidence established that all of the above tests and other measures were appropriate means to evaluate Student.

25. Student's score on the ROWPVT was one standard deviation above what she would be expected to score based upon her cognitive abilities. Her score on the EOWPVT was one standard deviation below her expected score. Corell opined that Student's scores on these tests indicated that vocabulary skills are one of Student's strengths.

26. Based upon Santoyo's collection of Spanish Language samples from Student, Corell determined that Student expressed sentences with appropriate length, complexity and use of grammatical markers for her cognitive ability in Spanish. Corell noted that Student has a stable use of tenses, appropriate use of functors (function words), morphological markers (patterns of word formation) and subject-word agreement. With regard to Student's English language skills, Corell noted that Student's skills were typical of an English language learner and that she would occasionally switch into the alternate language (e.g. from English to Spanish) when she could not think of a specific word to describe an item.

27. Corell noted that Student's pragmatic language skills were adequate and commensurate with the current findings of her cognitive ability. Student was able to use language to express her needs and wants, give and request information, initiate and maintain topics, and maintain listener and speaker roles. She was also able to function effectively as a communicator, manipulate others in the environment, tell about pictures and events, express and sequence ideas logically, and request clarification and/or repetition as needed.

28. Based upon the results of both the standardized and alternative assessments, Corell concluded that Student demonstrated speech and language skills commensurate with the current findings of Student's cognitive ability level.

29. The evidence established that the testing, assessment materials, and procedures used by Corell for the purposes of her speech and language assessment of Student were not racially, culturally, or sexually discriminatory.

30. Since the standardized and alternative speech and language assessments were administered to Student in both English and Spanish, Student's concerns that she should have been assessed in Spanish are not applicable to the speech and language component of the multidisciplinary assessment. The assessment was administered in both languages based on the fact that Student converses in both and therefore yielded accurate information regarding Student's speech and language skills in both languages.

31. VanVoorebeke, Student's teacher, assessed Student in the area of academic and pre-academic achievement. VanVoorebeke has worked for the District as a special education teacher for 14 years. She has both a general education and a special education credential and also possesses a CLAD credential.

32. VanVoorebeke administered both standardized and informal assessments to Students. She chose the Woodcock-McGrew-Werder Mini-Battery of Achievement (WMW) and the Woodcock Johnson – III Tests of Achievement (WJ-III) as the standardized assessments for Student. She administered the Brigance Inventory of Basic Skills (Brigance)

and observed Student in her classroom as part of her informal assessments. VanVoorebeke has administered the WMW, the WJ-III, and the Brigance, tens of times. The WJ-III is the expanded version of the WMW; she administered both versions of the test to assure that the scores she obtained were correct. The Brigance is an informal test for reading and math. VanVoorebeke administered it to Student to obtain more details on Student's present academic achievement levels and where her skills were in areas such as counting money.

33. Student challenges the academic achievement tests administered to her by VanVoorebeke partly on the grounds that the tests should have been administered in Spanish. However, VanVoorebeke credibly testified that Student receives all her academic instruction in English in the classroom. Based upon that, she decided that it was more appropriate to administer the tests in English rather than Spanish. Although the evidence demonstrated that Student converses in Spanish almost exclusively at home and often converses in Spanish at school, the only information in evidence is that her lessons, assignments, and homework are in English. There is no evidence to show that Student received instruction in Spanish or that she even knew how to read and write in Spanish. Furthermore, there is no evidence that Student's assessment results would have been different had VanVoorebeke assessed her in Spanish. The weight of the evidence demonstrates therefore that it was appropriate for VanVoorebeke to administer the standardized and informal academic achievement tests to Student in English.

34. Student also asserts that the multidisciplinary triennial assessment is invalid because her parents had informed the District right before it assessed Student that she was depressed and had indicated to them that she wanted to hurt herself. Student contends that based upon this information, the District should have postponed its assessment until such time as Student's mental health had stabilized.

35. Mother informed Stratford that Student was exhibiting signs of depression at home. Based upon that information, Stratford convened an IEP meeting with Student's parents on January 23, 2007. Student's parents informed the team that she was sad because she could not read and write. Based on the information from Student's parents, the IEP team considered other placement options for Student, who was then mainstreamed in a general education class. The District offered to place Student in a special day class which focused on language acquisition. Student's parents agreed to the change in placement. Based upon the concern of Student's parents that she was depressed, the IEP team suggested referring Student to Providence Community Services for counseling; Student's parents agreed to the referral.

36. However, there is no evidence to support the contention of Student's parents that she was depressed. For reasons that are not clear in the record, Student never received counseling from Providence. There are no medical reports in evidence that corroborate a diagnosis of depression and no medical professional testified at hearing. Moreover, Stratford, Corell, and VanVoorebeke each testified that Student did not evince any signs of depression at school before or during the assessments. Stratford testified that Student was cooperative during her assessments of her, that she worked well, and asked for clarification

where needed. In her observations of Student, Stratford, who is has a Master's degree in school psychology, noted that Student was outgoing and was very interactive with school staff and with the other students. In her conversations with Student, Stratford noted that Student talked about things that were important to her, was very sweet, appeared enthusiastic, and generally did not exhibit any signs of depression at school. There was no indication of Student wanting to hurt herself or any other signs of mental health issues.

37. VanHoorebeke and Corell also credibly testified that they did not note any signs of depression in Student at any time before, during or after they assessed her. VanHoorebeke noted that Student was anxious at the beginning of the assessment, as she often was during any kind of testing, but became more comfortable as the assessment progressed. Nor did Student exhibit any signs of depression in class. To the contrary, she had no attendance problems, she completed the majority of in-class assignments, and never stated to VanHoorebeke that she was depressed or wanted to hurt herself. VanHoorebeke noted that Student was friendly, assertive, and cooperative in class, and that she had no reason to believe that she was suffering from depression or other mental illness. Corell's observations of Student were similar to those of VanHoorebeke; Corell did not note any signs of depression in Student. Rather, she noted that Student was cooperative, upbeat, and presented like a typical teenager.

38. The evidence indicates that Student did not demonstrate any signs of depression or other mental illness at school. There was no reason therefore for District assessors to believe that it would have been inappropriate to assess Student on January 23, 2007, or that the assessment results would be invalid based upon Student's mental state.

39. The weight of the evidence demonstrates that, with regard to the standardized assessments that the District administered to Student in the areas of cognitive development (KABC-II and the C-TONI), sensory motor processing (VMI-5), speech and language (ROWPVT and EOWPVT), academic achievement (WMW, WJ-III, and Brigance), and social/emotional/behavioral (BBRS), the testing, assessment materials, and procedures used for the purposes of assessment were selected and administered so as not to be racially, culturally, or sexually discriminatory. The evidence also established that all standardized tests were either non-verbal in nature, were developed for bilingual and/or English language learners, were administered to Student both in English and Spanish, or, as in the case of the academic achievement tests, were administered to Student in English since that was her language of instruction in the classroom. The tests were therefore administered in a form likely to yield accurate information regarding what Student knows and can do academically, developmentally, and functionally. The evidence also established that all the assessments described above were administered by District assessors who were knowledgeable, experienced, and qualified in the areas of disability being assessed. The evidence also demonstrated that these assessments were administered in accordance with the instructions provided by the publishers of each assessment.

40. The evidence thus supports a finding that the District appropriately assessed Student in the area of cognitive development, sensory motor processing, speech and

language, academic achievement, and social/emotional/behavioral, as documented in the February 27, 2007 assessment report. As discussed above, the District's assessments met the legal requirements of the applicable statutes. The tests and other assessment instruments were administered by competent and trained personnel, included at least one standardized test which was valid for the purposes used, were not discriminatory, and were administered in Student's primary language where appropriate. With the exception of the behavior/vocational/self-help skills assessment, as discussed below, all assessments were validly administered. The District did not rely on a single test to determine Student's needs, but instead relied upon a variety of tests, observations and teacher reports. The District has met its burden of proof as to these assessments, and Student is not entitled to an IEE at public expense in those areas of assessment.

41. However, the ALJ does not reach the same conclusion with regard to Stratford's assessment of Student in the area of adaptive behavior/vocational/self-help skills. Stratford assessed these areas because Student's daily living skills is a matter of significant concern given Student's diagnosis of mental retardation. The assessment in these areas was for the purposes of determining Student's skills in daily activities necessary for taking care of herself and getting along with others. Stratford first had Student's teacher, VanHoorebeke, prepare an informal rating scale of Student's work habits. VanHoorebeke noted that Student had regular school attendance, was punctual, and regularly completed her in-class assignments, but that Student inconsistently returned her homework.

42. Stratford also administered the ABES-R to Student by having Student's teacher complete the school version rating scales of the ABES-R and having Mother complete the home version. Stratford scored the rating scales and determined that the General Adaptive Composite scores were similar on both the teacher and parent scales and that both indicated that Student's behaviors fell in the low adaptive level.

43. During the hearing, Student raised for the first time the validity of the ABES-R with regard to the home version given to Mother. Mother credibly testified that the home version was not translated into Spanish for her although the District is aware that she does not read, write, or converse in English, evidenced by the fact that the District gave her a Spanish translation of the assessment plan. Additionally, Mother testified that she never saw the home version of the ABES-R, that she did not complete it, that it was not her handwriting on the form, and that no one completed it for her by orally asking her the questions. Mother credibly testified that she had no knowledge of who might have filled in the rating scores on the home version of the test.

44. Stratford was genuinely surprised when informed by Student's advocate during Stratford's testimony at the hearing that Mother denied having seen or completed the ABES-R home version. Based on her years of experience, professionalism, and her forthright testimony at hearing, Stratford was credible when she denied having filled out the home version ratings scale herself. There is no incentive for her having done so. However, Stratford could not dispute Mother's assertions regarding Mother's lack of knowledge of the home version. Stratford never explained at hearing how Mother was provided with the copy

of the ABES-R, and Stratford never testified that she personally translated the rating questions to Mother or that she was present when someone else did so. Nor did Stratford know when and how the home version rating form was returned to her. All Stratford recalled at hearing was that the home version, which she believed had been completed by Mother, appeared in her box one day at school in completed form. Other than the ABES-R, no other input was sought from Student's parents. Therefore, there was no parent input into the adaptive behaviors assessment, which was specifically administered to address Student's then-present levels of daily living skills both at home and at school. The District did not argue at hearing or in its closing brief that the ABES-R results would be valid even if a parent did not or could not complete the home version portion of the assessment.

45. The weight of the evidence therefore supports Mother's testimony that she never saw the ABES-R before the day of the hearing, could not have understand what was on it because she does not read English, and that, in any case, she did not complete the form either alone or with anyone else's assistance. Stratford did not address at hearing nor did the District address in its brief, the implications or impact on the validity of the administration of the ABES-R of someone other than Mother having completed the home version ratings scale. As petitioner, the District had the burden at hearing to prove the validity of its assessment. With regard to its adaptive behavior assessment of Student, the District has not met its burden of proof. Student is therefore entitled to an IEE in the area of adaptive behavior/vocational/self-help.

Was the District's addendum multidisciplinary triennial assessment dated June 10, 2008, appropriate?

46. Over a year after the District completed its multidisciplinary triennial assessment of Student, Student's parents expressed concerns that she might have autism or autism spectrum disorder. In spite of the fact that Stratford, Corell, and VanVoorebeke had never seen Student demonstrate autistic-like behaviors at school, the District agreed to conduct further assessments of Student specifically in the area of autism to determine if Student had needs in that area that the District should address.

47. Speech and language pathologist Corell assessed Student in the areas of language, pragmatics and speech. Corell reviewed Student's records, observed her in the classroom, collected spontaneous language samples in English, and administered the Test of Questions in English. However, since Student is classified as an English language learner, Corell also had Student's instructional aide collect spontaneous language samples from her in Spanish and had the aide administer the Test of Questions to Student in Spanish, the latter of which was interpreted and scored by District bilingual SLP Susan Cool.

48. During the language testing, Corell noted that Student was able to maintain on task and on topic, gave consistent effort, listened attentively and asked for repetition when necessary, applied thought and effort to the assessment process, conversed freely, and maintained adequate eye contact. Corell noted that her previous assessment of Student from 2007 indicated that Student was functioning above what was expected for her cognitive level.

49. The compliment of language tests administered to Student was designed to assess her in the areas of receptive, expressive, and pragmatic language. The results of both the informal and formal assessments indicated that Student follows verbal instructions in the classroom without difficulty in both English and Spanish and that she understands questions and answers them appropriately to meet her academic needs. Corell noted that Student's teachers reported that they have no difficulty understanding her in the classroom. Corell noted that Student's expressive language is commensurate with her cognitive ability, that her sentence structure is adequate in Spanish and includes a high level of verb structures in conversational speech. In English, Student's sentence structure is typical of a student who switches between two languages and is commensurate with her cognitive ability level. Corell's observations of Student indicated that she demonstrates adequate pragmatic language skills to meet the needs of an academic setting. Corell observed that Student converses easily with her teachers and classmates, makes her needs known when necessary, demonstrated adequate initiation of communication, listening for understanding, abstract reasoning, understanding the perspective of others, determining the parts versus the whole, and humor.

50. The test results indicated that Student's articulation skills are commensurate with her cognitive abilities and experience in both English and Spanish and that any distortion or omission errors do not affect her ability to access the curriculum. The test results indicated that Student's speech in both English and Spanish was from 90 to 100 per cent intelligible and that none of Student's teachers had difficulty understanding her speech.

51. As part of the addendum assessment, VanHoorebeke, Student's teacher, updated Student's assessments in the area of academics. She administered the Woodcock-McGrew-Werder Mini Battery of Achievement to Student. VanHoorebeke testified that the test results indicated that Student had made academic progress since being tested in January 2007.

52. In response to the concerns of Student's parents that she might be on the autism spectrum, school psychologist Stratford administered both formal and informal assessments to Student. She formally observed her in the classroom, reviewed Student's records, and administered the Childhood Autism Rating Scale (CARS) to her. In order to get a complete picture of Student, Stratford requested the assistance of two other school psychologists, Vivien Phan and Allison Reigle. Reigle, who is bilingual in English and Spanish, administered the Autism Diagnostic Observation Schedule (ADOS) to Student in Spanish; Phan observed and took notes so that she and Reigle could score the test together.

53. Stratford observed Student in her classroom on June 10, 2008. She noted that Student looked directly at her instructional aide while she gave her verbal directions and followed the aide's gaze when they both had to look at the written assignment to be completed. Student asked questions about the assignment, verbally interacted with a teacher substitute, and participated in a conversation with her classmates.

54. At the hearing, Stratford explained that the CARS is a ratings scale that a student's parents and teachers complete independent of each other. It is a standardized test. Student's mother and teacher VanHoorebeke completed the ratings. The results of Mother's ratings was scored as 36, and indicated that Student was functioning in the mildly-moderately autistic range at home. VanHoorebeke's ratings resulted in a score of 21, indicating that Student was functioning in the non-autistic range at school.

55. Phan and Riegle administered the ADOS, Module 2 to Student. It is a standardized observation of social behavior and communication that allows for a child to be seen in a variety of different communicative situations. Student gave most of her responses to the test in English although it was administered to her in Spanish. At hearing, Phan explained that the ADOS is a semi-structured standardized evaluation for autism or pervasive developmental disorder. Phan has been specifically trained to administer the ADOS and has done so over 100 times. The assessment lasts for 45 to 60 minutes and consists of creating social situations to see behaviors that might appear. Riegle asked Student questions about school and her family to obtain a level of her expressive language skills. Module-2 is designed for students who use phrase speech and/or are verbally fluent. The ADOS manual states that it is best to be conservative and use an "easier" module so as not to "push" the student's language abilities.

56. Student's communication total score was 3, borderline for being found on the autism spectrum, and too low a score to be found autistic. Her social interaction total score was 0, far below the score of 6 needed to be found autistic and well below the score of 4 needed to be found on the autism spectrum. Student's communication and social interaction total score was 3, very far below the minimum score of 12 which would have found her autism, and far below the minimum score of 8 which would have placed her on the autism spectrum. Phan and Riegle thus found that Student did not meet the criteria for autism or for finding that she was on the autism spectrum.

57. Phan and Riegle noted that Student's communications during the assessment consisted of non-echoed phrase speech of three or more words, with appropriate variation in tone, reasonable volume, and normal rate of speech. Student's use of language was appropriate, she spontaneously offered information about her own thought, feelings and experiences, and showed an interest in the assessors by asking questions and otherwise participating in conversational interchanges. Student maintained eye contact, demonstrated facial expressions, communicated understanding and shared emotion with others. She responded to her name by making eye contact immediately and used verbal and non-verbal means to initiate social interaction with the assessor. Additionally, Student spontaneously played with toys in a conventional manner. Finally, Phan and Riegle noted that Student did not demonstrate any unusual sensory interests or responses such as sniffing or repetitive touching, and was not destructive, negative, or aggressive during the assessments. Student displayed no signs of anxiety and appeared happy and to enjoy the assessment process.

58. There is no evidence that Student was evincing signs of depression or other mental or physical illness, or was otherwise incapable of being properly assessed at the time of the addendum assessment.

59. The results of all tests the District administered to Student as part of its addendum assessment indicated that Student demonstrates overall mild mental retardation and that she does not meet the criteria for autism or that she is otherwise on the autism spectrum.

60. Corell's, VanHoorebeke's, Stratford's and Phan's testimony established that the District's addendum assessments were appropriate. The formal assessments were standardized, normed tests that were administered in accordance with the publisher's instructions, and were validated for the specific purpose for which they are used. The District selected the testing, assessment materials, and procedures used for the purposes of the assessment and administered the assessments so as not to be racially, culturally, or sexually discriminatory. Moreover, the tests were conducted by persons knowledgeable in the disabilities assessed.

61. Where necessary and appropriate, the District chose materials and procedures in Student's primary language to ensure the validity of the assessments. As stated in Factual Findings 31 through 33, VanVoorebeke's failure to administer the achievement tests to Student in Spanish does not invalidate the assessment. Student receives her academic instruction in English and has been attending school in the United States, in English immersion classes, since she was six years old. Although Student is more comfortable conversing in Spanish, there is no evidence that Student can read and/or write in Spanish. Furthermore, Student presented no evidence to rebut the District's contention that the achievement tests were appropriately administered to her in English.

62. The evidence therefore supports a finding that the District appropriately assessed Student in June 2008. The evidence also supports a finding that the District properly denied the request by Student's parents for an IEE based upon its June 10, 2008 addendum assessment.

LEGAL CONCLUSIONS

1. In an administrative proceeding, the burden of proof is on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].) The District requested this hearing and therefore bears the burden of proof.

2. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil's educational needs shall be conducted.

(Ed. Code, § 56320.)⁴ The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (Ed. Code, § 56320, subs. (e), (f); 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(2), (c)(4) (2006).)

3. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's native language or other mode of communication unless this is clearly not feasible. (Ed. Code, § 56320, subd. (a); 20 U.S.C. § 1414(b)(2), (3); 34 C.F.R. § 300.304(c)(1)(i), (ii) (2006).) Tests and other assessment materials shall be provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer. (Ed. Code, § 56320, subd. (b)(1); 34 C.F.R. § 300.304(c)(1)(ii) (2006).)

4. Tests and other assessment materials must be administered by trained and knowledgeable personnel and must be administered in accordance with any instructions provided by the producer of the assessments, except that individually administered tests of intellectual or emotional functioning shall be administered by a credentialed school psychologist. (Ed. Code, § 56320, subd. (b)(3); 34 C.F.R. § 300.304(c)(1)(iv), (v) (2006).)

5. A reassessment of a child shall occur “not more frequently than once a year, unless the parent and the local educational agency agree otherwise, and shall occur at least once every three years....” (Ed. Code, §56381, subd. (a)(2); 34 C.F.R. § 300.303(b) (2006).) A reassessment “shall be conducted if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil's parents or teacher requests a reassessment.” (Ed. Code, § 56381, subd. (a)(1); 34 C.F.R. §300.303(a) (2006).)

6. The procedural safeguards of the Individuals with Disabilities Education Act (IDEA) provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1) (2006); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) “Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question....” (34 C.F.R. § 300.502(a)(3)(i) (2006).) To obtain an IEE, the student must disagree with an assessment obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1), (2) (2006).)

7. The provision of an IEE is not automatic. Code of Federal Regulations, title 34, part 300.502(b)(2), provides, in relevant part, that following the student's request for an

⁴ Federal law uses the term “evaluation” and California laws uses the term “assessment,” but the two terms have the same meaning for purposes of this Decision and will be used interchangeably herein.

IEE, the public agency must, without unnecessary delay, either: (i) File a due process complaint to request a hearing to show that its assessment is appropriate; or (ii) Ensure that an independent educational assessment is provided at public expense, unless the agency demonstrates in a hearing pursuant to parts 300.507 through 300.513 that the assessment obtained by the parent did not meet agency criteria. (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].)

With the exception of its Adaptive Behavior Evaluation Scale – Revised Assessment, the District conducted an appropriate multidisciplinary triennial assessment, as documented in the assessment report dated February 27, 2007.

8. As discussed in Factual Findings 7 – 40 above, the District’s cognitive development assessment, sensory motor processing assessment, speech and language assessment, academic achievement assessment, and social/emotional/behavioral assessment, all met the requirements of the code. The District assessed Student in all areas related to her suspected disability, and no single procedure was used as the sole criterion for determining whether Student had a disability or determining an appropriate educational program for the Student. The assessment was conducted in Student’s primary language of Spanish where appropriate, and in English where the assessments were either non-verbal, used a model developed for bilingual and English language learner students, or, in the case of academic achievement, where Student’s primary mode of instructions was in English. The assessment materials were not racially, culturally or sexually discriminatory. The assessors who administered the tests and assessment materials were trained and knowledgeable regarding the tests and the areas to be assessed. (Factual Findings 7 – 40; Legal Conclusions 2 – 8.)

9. The District met its burden of showing that its cognitive development assessment, sensory motor processing assessment, speech and language assessment, academic achievement assessment, and social/emotional/behavioral assessment were appropriate. The District is not obligated to fund an IEE in any of those areas of assessment as requested by Student’s parents.

10. However, as set forth in Factual Findings 41 – 45, the weight of the evidence demonstrates that the home version rating scale of the ABES-R, which the District administered as part of its adaptive behavior assessment of Student, was not administered appropriately. The form Stratford provided for Mother to fill out was written in English and the evidence is persuasive that Mother does not read English. The District is aware that Mother needs both verbal and written translations to be provided to her; it has previously acknowledged this fact by providing her with an assessment plan in Spanish and by providing an interpreter at IEP meetings. However, in spite of this, the District did not translate the home version of the ABES-R into Spanish for Mother or otherwise ensure that it was orally translated to her. Additionally, although the District did not become aware of it until the hearing in this matter, the evidence is persuasive that Mother had never seen the home version rating scale before the hearing and did not fill it out herself or with the assistance of anyone else. The District therefore failed to administer this test appropriately

and Student is therefore entitled to an IEE at public expense in the area of adaptive behavior/vocational/self-help skills. (Factual Findings 41 – 45; Legal Conclusions 2 – 8 and 10.)

The District's addendum assessment was appropriate, as documented in the assessment report dated June 10, 2008.

11. As set forth in Factual Findings 46 – 62 above, the evidence supports a finding that the District's addendum assessment met the requirements of the code. The District assessed Student in all areas related to her suspected disability of autism, and no single procedure was used as the sole criterion for determining whether Student qualified for special education under the category of autistic, or as being on the autism spectrum. The assessments were conducted in Student's primary language of Spanish where necessary and appropriate. The assessment materials were not racially, culturally or sexually discriminatory. The assessors who administered the tests and assessment materials were trained and knowledgeable regarding the tests and the areas to be assessed.

12. The standardized testing and other assessment tools were valid for the specific purposes for which they were used and were administered in accordance with the publisher's instructions. In addition to the standardized assessment tools, the District assessors conducted observations of Student, received input from Mother, and reviewed Student's records, including her previous assessments. The assessments were appropriate and sufficient to determine whether Student had unique needs in the area of autism.

13. The District met its burden of showing that its addendum assessment was appropriate and sufficient to determine Student's needs. The District is not obligated to fund an IEE as requested in the areas of speech and language, academic achievement, or autism, as requested by Student's parents. (Factual Findings 46 – 62; Legal Conclusions 2 – 8 and 11 – 13.)

ORDER

1. The District's assessments in cognitive development, speech and language, sensory motor processing, academic achievement, and social/emotional/behavioral, as documented in the multidisciplinary triennial assessment report dated February 27, 2007, were appropriate. The District is not obligated to fund independent educational evaluations in those areas.

2. The District's addendum assessments in academic achievement, speech and language, and autism, as documented in the addendum assessment report dated June 10, 2008, were appropriate. The District is not obligated to fund independent educational evaluations in those areas.

3. The adaptive behavior/vocational/self-help skills assessment, as documented in the multidisciplinary triennial report dated February 27, 2007, was not appropriate.

Within 60 days of this Order, the District is ordered to fund an adaptive behavior/vocational/self-help assessment for Student conducted by a qualified, independent assessor who is not an employee of the District or of the SELPA to which the District belongs. The District shall select the names of three independent assessors from which Parents may pick one. If Parents do not select a name, the District shall select the name. Those parts of the assessment to be completed by either or both of Student's parents shall be translated in writing into Spanish.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. In accordance with that section the following finding is made: the District prevailed in substantial part on the issues in this case. Student prevailed solely on the issue of whether the adaptive behavior/vocational/self-help skills assessment was administered appropriately.

RIGHT TO APPEAL THIS DECISION

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 90 days of receipt of this Decision in accordance with Education Code section 56505, subdivision (k).

Dated: May 14, 2009

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings