

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

In the Matter of:

OAK GROVE SCHOOL DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2007100353

DECISION

Administrative Law Judge (ALJ) Suzanne B. Brown, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on January 14-15, 2008, in San Jose, California.

Attorney Rodney Levin represented Oak Grove School District (District). Elizabeth Tjader, Program Specialist, attended the hearing on the District's behalf.

Student's father (Father) represented Student. Student's mother (Mother) attended a portion of the hearing on Student's behalf.

On October 10, 2007, OAH received a due process complaint (Complaint) from the District in this matter. On October 25, 2007, OAH granted a continuance of the hearing. Following a trial setting conference (TSC), OAH rescheduled the hearing for January 14-16, 2008. At the hearing, the ALJ received sworn testimony and documentary evidence. Upon receipt of written closing arguments on January 29, 2008, the record was closed and the matter was submitted.

ISSUE¹

Did the District's psychoeducational assessment, as reported at the April 17, 2007 Individualized Education Program (IEP) team meeting, constitute an appropriate assessment pursuant to the legal requirements?

CONTENTIONS OF THE PARTIES

The District asserts that its psychoeducational assessment was appropriate and that it is not required to fund an independent educational evaluation (IEE). The District contends that its assessment complied with all state and federal requirements, including that it assessed Student in all areas of suspected disability, and that the assessment tools were properly administered by knowledgeable, qualified personnel in accordance with test instructions. Regarding the administration of the Conners' Teacher Rating Scale-Revised (CTRS) to Student's third grade teacher on January 23, 2007, the District asserts that the administration of the second version of the test was proper and in accordance with test instructions, and occurred due to the teacher's and school psychologist's desire that the test results be fully accurate.

Student does not dispute the District's academic achievement or speech-language testing, and does not dispute the administration of the Test of Visual Perceptual Skills, Third Edition (TVPS-3), the Test of Auditory Processing Skills, Third Edition (TAPS-3), or the Developmental Test of Visual Motor Integration (VMI).

Student disputes other portions of the District's psychoeducational assessment. Student argues that the District failed to assess her in all areas of suspected disability related to emotional disturbance. In particular, she contends that the administration of the Kaufman Assessment Battery for Children, Second Edition (KABC-II) should have included the Atlantis Delayed and Rebus Delayed subtests. Student also contends that the teacher portion of the Vineland Adaptive Behavior Scales (Vineland) had the effect of being culturally discriminatory. Student further asserts that the District school psychologist was not sufficiently trained or knowledgeable, and in particular was not knowledgeable about Student's condition of Alcohol Related Neurodevelopmental Disorder, a fetal alcohol spectrum disorder. Student also contends that the administration of the Behavioral Assessment System for Children, Second Edition (BASC-2) was invalid and not in conformance with test instructions, because the assessor did not administer the BASC-2 self-report to Student. Furthermore, she argues that the CTRS was not administered in conformance with test instructions because the school psychologist's second administration of the test to Student's teacher minimized the indications of Student's significant behavior problems, and therefore produced invalid and inaccurate results.

¹ The ALJ has slightly rephrased the issue for purposes of clarity. The substance of the issue remains the same as that identified in the Complaint and the Order Following Prehearing Conference.

Student also disputes the District's finding that she was not eligible for special education. However, whether Student was eligible is not at issue in the present case, and therefore will not be decided in this decision.²

FACTUAL FINDINGS

Jurisdiction

1. Student is a 10-year-old girl who resides with her parents and siblings within the boundaries of the District. She has never been found eligible for special education.

Factual Background

2. Father and Mother (collectively, Parents) adopted Student from a Russian orphanage in 2004, when she was seven years old. For the 2004-2005 school year, Student attended first grade at a private school. In 2005, Student received diagnoses, pursuant to the Diagnostic and Statistical Manual, Fourth Edition (DSM-IV), of Reactive Attachment Disorder, Disinhibited Type, and Post-Traumatic Stress Disorder (PTSD). For the 2005-2006 school year, Student attended a general education second grade class at the District's Hayes Elementary School (Hayes).

3. In May and June 2006, licensed psychologist Dr. Melody London conducted a psychoeducational assessment of Student, including testing in cognitive abilities, academic achievement, and emotional functioning. Pursuant to the DSM-IV, Dr. London diagnosed Student with Cognitive Disorder, Not Otherwise Specified (NOS), PTSD, Reactive Attachment Disorder, and a Rule/Out of Alcohol Related Neurodevelopmental Disorder. While detailing Student's weaknesses and areas of deficit, Dr. London's report also noted that Student's academic achievement was at or above her ability level when compared to her full scale intelligence quotient (IQ) score.

4. In or about August 2006, Student ran away from home. Pursuant to an order from the Santa Clara County Juvenile Dependency Court, Student began receiving services from Compadres Wraparound Service, to support her placement at home and avoid the need for residential placement. She also received ongoing psychiatric treatment and medication management from a private psychiatrist. In October 2006, Student began receiving psychotherapy from a psychologist, Dr. Donald Williams.

5. For the 2006-2007 school year, Student attended Hayes in a general education third grade class taught by Stephanie Hodges. In or about October 2006, Parents asked the principal at Hayes to refer Student for a special education assessment. On November 27, 2006, the Student Study Team (SST) convened. That team, including Parents, agreed to refer

² The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

Student for a “full psychoeducational evaluation.” Parents signed an assessment plan for assessment in the areas of academic achievement, social/adaptive functioning, communication development, and cognitive development.

6. The District’s assessors conducted the assessment of Student during the period from late November 2006 to early February 2007. Academic achievement testing was administered by a District resource specialist, and testing in speech, language, and communication was administered by a speech-language pathologist. District school psychologist Courtney Jew assessed Student in the areas of cognitive development and social/adaptive functioning.

7. In a letter dated February 5, 2007, Dr. London reiterated her diagnoses of Student, based upon her evaluation of Student in May/June 2006. Dr. London’s letter stated in part that she view Student as a child with a specific learning disability that exhibits as “neurobehavioral dysfunctions, neuropsychological or cognitive dysfunctions resulting in an imperfect ability to think, and social dysfunctions resulting in an inability to form reciprocal interpersonal relationships.” Similarly, in a letter to Ms. Jew dated February 7, 2007, Dr. Williams wrote that Student “is a child with a specific learning disability comprising neurobehavioral dysfunction, cognitive dysfunction resulting in an imperfect ability to think, social dysfunction resulting in an inability to form reciprocal interpersonal relationships.” Additionally, in a letter to Ms. Jew dated March 15, 2007, Student’s pediatrician explained his diagnosis of Student with Alcohol Related Neurodevelopmental Disorder.

8. The IEP team convened on February 7, 2007, to review the assessment results, but the meeting concluded early due to a disagreement. On April 19, 2007, the IEP team reconvened to complete the review of Student’s assessments. Based on the assessment results, the District members of the IEP team recommended that Student was not eligible for special education. Parents disagreed with that recommendation.³

9. In August 2007, Parents notified the District that, in light of their disagreement with the results of the District’s assessment, they were requesting an IEE. On October 10, 2007, OAH received the District’s request for due process hearing regarding the appropriateness of the District’s assessment.

District’s Psychoeducational Assessment

10. In conducting the psychoeducational assessment, Ms. Jew reviewed Student’s report cards and other educational records, reviewed Dr. London’s report, interviewed Student’s second-grade and third-grade teachers, observed Student in class and at recess,

³ On June 20, 2007, Father filed a compliance complaint with the California Department of Education (CDE), Special Education Division, Procedural Safeguards Referral Service, alleging that the District’s failure to refer Student to Santa Clara County Department of Mental Health for a mental health evaluation constituted a failure to assess in all areas of suspected disability. In a report dated August 6, 2007, CDE found that the District was in compliance and had assessed Student in all areas of suspected disability. In a letter dated October 12, 2007, CDE denied Father’s request for reconsideration of its compliance report.

gave Parents a health and development questionnaire to complete, and administered standardized tests and rating scales. To Student, Ms. Jew administered the KABC-II, the TVPS-3, and the TAPS-3. To Student's third grade teacher, Mrs. Hodges, Ms. Jew gave the BASC-2, and the CTRS. Ms. Jew also had Father answer the questions on the BASC-2 and the Conners' Parent Rating Scale-Revised (CPRS). Subsequently, pursuant to a request from Father, Ms. Jew administered the Vineland to both Mother and Mrs. Hodges in February 2007.

Assess In All Areas Related To Suspected Disability

11. A pupil must be assessed in all areas related to the suspected disability including, if appropriate, health and development, vision, including low vision, hearing, motor abilities, language function, general intelligence, academic performance, communicative status, self-help, orientation and mobility skills, career and vocational abilities and interests, and social and emotional status. Student contends that the administration of the KABC-II should have included the Atlantis Delayed and Rebus Delayed subtests, because those subtests address memory, which Dr. London identified as an area of weakness for Student. However, those subtests were optional according to the KABC-II's instructions. Instead, the District's psychoeducational assessment included other subtests that measured memory, such as the KABC-II's Atlantis, Rebus, Number Recall, and Hand Movements subtests, and some subtests of the TVPS-3 and TAPS-3. Hence, the evidence established that the psychoeducational assessment tested in the area of memory, and there was no evidence to the contrary.

12. Moreover, Dr. Madeline Stusnick testified credibly that the psychoeducational assessment evaluated Student in all areas of suspected disability, and that there was no area that the testing failed to explore. Dr. Stusnick has numerous years of experience as a licensed clinical psychologist and as a licensed school psychologist. She holds a Ph.D. in clinical psychology from the State University of New York, Buffalo. She was a knowledgeable witness who gave credible, straightforward testimony that was unrefuted by any other evidence. Thus, because the District's psychoeducational assessment tested Student in the area of memory, and convincing testimony established that there were no areas of disability that the psychoeducational assessment failed to evaluate, the absence of additional testing in memory did not constitute a failure to assess in all areas related to the suspected disability.

13. Student also contends that the District failed to assess her in all areas of suspected disability related to emotional disturbance, because the assessment did not include Student completing a self-report about her social/emotional status, such as the self-report on the BASC-2. Testimony from Dr. Stusnick established that the test manual for the BASC-2 did not require a pupil self-report, and a self-report would typically not be administered to a pupil Student's age. In this case, Parents' reports that Student frequently lied supported the assessor's decision not to administer the self-report to Student. Instead, the psychoeducational report utilized other tools to measure Student's social and emotional status, including the parent and teacher reports of the BASC-2, the CTRS, and the Vineland.

For these reasons, the psychoeducational assessment assessed Student's social/emotional functioning, and the absence of a self-report from Student did not constitute a failure to assess in all areas related to the suspected disability. In light of all of the above, the District established that it assessed Student in all areas related to her suspected disability.

Tests, Materials, And Procedures Selected And Administered So As Not To Be Racially, Sexually, Or Culturally Discriminatory

14. Testing, assessment materials, and procedures used for the purposes of assessment must be selected and administered so as not to be racially, culturally, or sexually discriminatory. Student contends that the teacher's portion of the Vineland had the effect of being culturally discriminatory. Specifically, Student argues that the Vineland was culturally discriminatory because it was not normed on children raised in a Russian orphanage, and that it had the discriminatory effect of causing Mrs. Hodges to overestimate Student's abilities. However, there was no evidence to support this claim. Rather, Dr. Stusnick established in her testimony that the Vineland was not culturally discriminatory. Dr. Stusnick credibly explained that the Vineland does not test any part of culture. Moreover, if somehow a question did not apply due to a pupil's cultural differences, the Vineland allows the responder to answer a question with a "not applicable" response. In light of all of this information, and the lack of any evidence to the contrary, the tests, materials, and assessment procedures were not racially, sexually, or culturally discriminatory.

Native Language And Language Most Likely To Yield Accurate Information

15. Materials and procedures shall be provided in the pupil's native language or mode of communication, unless it is clearly not feasible to do so. 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. Although Russian is Student's native language, administering tests to her in Russian was clearly not feasible because English is her primary language. Student concurs that she does not speak Russian and, as a result, does not dispute the District's administration of tests to her in English. Accordingly, the District's administration of tests to Student in Russian was clearly not feasible, and administration of tests in English was most likely to yield accurate information about what Student knew and could do academically, developmentally, and functionally.

Assessors Must Be Knowledgeable of Pupil's Disability

16. The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. A disability is defined as mental retardation, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, or specific learning disability. "Low incidence disability" means a severe disabling condition of hearing impairment, vision impairment, and severe orthopedic

impairment, or any combination thereof. Student contends that Ms. Jew was not sufficiently trained or knowledgeable to conduct the psychoeducational assessment, because she was not knowledgeable about Student's condition of Alcohol Related Neurodevelopmental Disorder, a fetal alcohol spectrum disorder (FASD).

17. Preliminarily, Student claims that FASDs are low incidence disabilities. The Education Code's definition of low incidence disabilities is limited to severe disabling conditions of hearing impairment, vision impairment, and/or orthopedic impairment. Therefore, FASDs do not constitute low incidence disabilities for purposes of this analysis.

18. Ms. Jew is a credentialed school psychologist who holds a Master's degree in educational psychology from Chapman University. Over the course of her years as a school psychologist and as a school psychologist intern, Ms. Jew has conducted approximately 55 special education assessments. She established in her testimony that she was knowledgeable about any disability that Student might have educationally that would render Student eligible for special education, such as emotional disturbance.

19. Ms. Jew was not knowledgeable about FASDs. However, the law defines "disability" to include only the disabilities which qualify a pupil for special education, and does not require that an assessor be knowledgeable about medical diagnoses, such as FASD. Thus, because Ms. Jew was knowledgeable about disabilities that Student might have for purposes of special education eligibility, such as emotional disturbance, Ms. Jew fulfilled the requirement that an assessor be knowledgeable of the pupil's disability.

Tests And Other Assessment Materials Administered In Accordance With Instructions And Administered In The Language And Form Most Likely To Yield Accurate Information

20. Tests and other assessment materials shall be administered in accordance with any instructions provided by the producer of the assessments. Student asserts that the administration of the BASC-2 was invalid and not in conformance with test instructions, because the assessor did not administer the self-report to Student. The only evidence Student points to in support of this position is the documentary exhibit of the BASC-2 webpage. The document describes the BASC-2 as a "comprehensive system" and states in part that "BASC-2 applies a triangulation method for gathering information. By analyzing the child's behavior from three perspectives - Self, Teacher, and Parent – you get a more complete and balanced picture." While the BASC-2 webpage encourages the use of all three questionnaires, nothing in the document indicates that the test instructions require the use of all three. Thus, there is no persuasive evidence that the test instructions for the BASC-2 require administration of the pupil self-report.

21. To the contrary, testimony from Ms. Jew and Dr. Stusnick established that the administration of the BASC-2 was valid and in accordance with the test instructions. As determined in Factual Finding 12, the test instructions for the BASC-2 did not require a pupil self-report and, typically, a self-report would not be administered to a pupil Student's age.

Dr. Stusnick testified persuasively that, when the BASC-2 is administered in a school setting, often the assessor administers the questionnaire only to the pupil's parent and teacher, and need not include obtaining a self-report from the pupil. In light of all of the above, the BASC-2 was administered in accordance with the test instructions, and its use was appropriate.

22. 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. Student contends that Ms. Jew's observations of Student should have utilized a scientifically validated tool, such as the BASC-2's Student Observation System (SOS). Similarly, Student argues that the information about Student's developmental history should have been obtained using a scientifically validated tool, such as the BASC-2's Structured Data History (SDH). However, Student's arguments on these points are not supported by evidence. Testimony from Ms. Jew and Dr. Stusnick established that the methods Ms. Jew used to observe Student and obtain a developmental history were valid and likely to yield accurate information. This testimony was unrebutted, and there was no evidence to the contrary. For these reasons, Student's contentions on these points do not succeed; the evidence established that the developmental history was obtained in a form most likely to yield accurate information.

23. Regarding the CTRS, Student argues that the test was not administered in conformance with the instructions provided by the producer of the test. As part of the psychoeducational assessment of Student, on the morning of January 23, 2007, Mrs. Hodges filled out the CTRS form that she had received from Ms. Jew. Ms. Jew had left the form in Mrs. Hodges' inbox, and Mrs. Hodges did not receive any guidance from Ms. Jew prior to filling out the form. The form instructed the teacher to rate, on a scale of zero to three, whether Student exhibited various problems at school. Each rating consisted of a measurement in all uppercase letters, such as "NOT TRUE AT ALL," followed by a brief explanation in parentheses, such as "(Never, Seldom)." Mrs. Hodges completed the form, but had some uncertainty about the difference between the mid-range answers of "JUST A LITTLE TRUE (Occasionally)" and "PRETTY MUCH TRUE (Often, Quite a Bit)." Later that day, Ms. Jew inquired whether Mrs. Hodges had any questions about the CTRS. Mrs. Hodges responded that she had questions about whether she had completed the form correctly, because of her uncertainty about the difference between the responses of "Occasionally" and "Often, Quite A Bit." Ms. Jew reviewed the rating scale form with Mrs. Hodges, and suggested that Mrs. Hodges answer according to the main measurement in uppercase letters, such as "JUST A LITTLE BIT TRUE" or "PRETTY MUCH TRUE," rather than relying on the explanations in parentheses. Ms. Jew and Mrs. Hodges agreed that Mrs. Hodges would fill out the rating scale form again. Thereafter, Ms. Jew relied only on the second version of the CTRS form that Mrs. Hodges completed.

24. Student argues that Ms. Jew's second administration of the CTRS to Mrs. Hodges was not in accordance with test instructions; Student contends that, because Mrs. Hodges rated Student's behavior as worse the first time she filled out the questionnaire, the

second administration of the CTRS hid the indications of Student's significant behavior problems, and therefore produced invalid and inaccurate results. This argument was not supported by the evidence. Testimony from Dr. Stusnick and Ms. Jew established that the second administration of the CTRS to Mrs. Hodges was in accordance with the instructions from the producers of the rating scale, and there was no evidence to the contrary. The witnesses testified persuasively that the test manual to the CTRS permits administration of the rating scale multiple times to the same individual.⁴ Moreover, Dr. Stusnick credibly explained that some variation in a teacher's answers to the questionnaire from one administration to the next are not unusual and do not point to any problem with the validity of the test results. In light of all evidence, the variations between Mrs. Hodges' responses to the CTRS do not indicate that the second administration of the test was invalid or not in accordance with the instructions from the producer of the rating scale.

25. Student also argues that the use of the CTRS was invalid because Mrs. Hodges did not understand the test directions. This argument is not borne out by the evidence. Mrs. Hodges' initial uncertainty regarding how to answer some items on the rating scale did not establish that her responses on the second administration of the rating scale were inaccurate. Indeed, Mrs. Hodges testified credibly that, the second time she completed the rating scale, she had a better understanding of the rating scale and how to respond to the items; this testimony was un rebutted, and there was no evidence to the contrary. Hence, the District established that the administration of the CTRS was valid and administered in conformance with the test manual from the producers of the CTRS.

26. Finally, Student's recent allegations regarding the District's production of the BASC-2 and CTRS protocols do not affect this decision's findings regarding the appropriateness of those assessment tools. In a motion dated January 22, 2008, Student argued for the first time that the District had failed to comply with a subpoena duces tecum by failing to produce all pages of the first administration of the CTRS, and failing to produce all pages of the score summary that should have been generated by the BASC-2 scoring software.⁵ Because Student did not raise these allegations during the hearing, there is insufficient evidence to determine whether the District failed to provide all pages of the documents.⁶ In any event, none of the findings in this decision concerned the weight given to the disputed documents. For example, although Student alleged that the BASC-2 document should have included pages containing score summaries and other information related to scoring, the scoring of the BASC-2 was not at issue and, therefore, was not addressed in the decision. Given the relatively limited issue in this decision, the pages about which Student raises concerns would not affect this decision's findings.

⁴ Indeed, the manual provides that, if the teacher does not complete the entire questionnaire in one sitting, then he or she should start over and fill out a new questionnaire the second time.

⁵ The ALJ ruled on this motion in an order dated January 31, 2008.

⁶ At the hearing, Student had the opportunity to examine witnesses familiar with these documents, object to admission of documents, or raise other arguments regarding the documents, but did not do so. In any event, the allegations in Student's subsequent motion did not warrant reopening the hearing record.

Weight Given To Information From Parents

27. Student contends that the psychoeducational assessment “largely ignored” information provided by the parents, specifically the findings of the 2006 independent evaluation by Dr. London. Ms. Jew testified credibly that she reviewed and considered Dr. London’s report, and Dr. London’s report and diagnoses are noted in the psychoeducational assessment report contained in the April 17, 2007 IEP.⁷ While Student raises a reasonable argument regarding the weight that Ms. Jew should have ascribed to Dr. London’s findings, this argument alone is insufficient to overcome the District’s credible, unrefuted evidence on this point. There is no evidence to establish that the psychoeducational assessment was inappropriate because it failed to give sufficient weight to Dr. London’s evaluation.

LEGAL CONCLUSIONS

1. In an administrative proceeding, the burden of proof is on the petitioner. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

Did the District’s Psychoeducational Assessment, as reported at the April 17, 2007 IEP team meeting, constitute an appropriate assessment pursuant to the legal requirements?

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.) 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).)

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).) 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).)

4. Tests and other assessment materials must be administered by trained and knowledgeable personnel and must be administered in accordance with any instructions

⁷ The report also detailed information obtained from Student’s parents from the health and development history, the Vineland, the BASC-2, and the CPRS, and noted that Parents reported that Student “is displaying significant behavioral and emotional difficulties at home.”

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).) Several special education decisions concerned assessments wherein the assessor administered the BASC-2 to a teacher and parent, but not to the pupil, and the decisions did not find such administration to be inappropriate or contrary to the instructions provided by the producer of the BASC-2. (See, e.g., *Student v. Newport-Mesa Unified School District*, OAH Case No. N2007020786; *East Whittier School District v. Student/East Whittier School District v. Student/Student v. East Whittier School District*, OAH Case No. N2005090275/N2005090276/N2005090277; *Capistrano Unified School District v. Student*, OAH Case No. N2007110456.) Contrary to Student’s contention, the case of *Rialto Unified School District v. Student*, OAH Case No. N2006080715, does not hold that a failure to utilize all three of the BASC-2 scales was inappropriate and failed to comply with the instructions from the BASC-2 manual. Rather, that decision found that the BASC-2 was not administered correctly in that case because of the combined lack of any classroom observation, structured developmental history, parent rating scale, pupil self-report, and reliable teacher rating scale. Hence, the *Rialto* decision is significantly different from the present case, where the school psychologist conducted observations, obtained a developmental history, and administered the BASC-2 to both a parent and a teacher.

5. The assessment of a pupil, including the assessment of a pupil with a suspected low incidence disability, shall be conducted by persons knowledgeable of that disability. (Ed. Code, § 56320, subd. (g).) A disability is defined as mental retardation, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, or specific learning disability. (34 C.F.R. § 300.8(a)(1).) “Low incidence disability” means a severe disabling condition of hearing impairment, vision impairment, and severe orthopedic impairment, or any combination thereof. (Ed. Code, § 56026.5)

6. The procedural safeguards of the 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); Ed. Code, § 56329, subd. (b); Ed. Code, § 56506, subd. (c).) “Independent educational assessment means an assessment 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).) 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) & (b)(2).)

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 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 sections 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].)

8. Based on Factual Findings 2 through 27, the District conducted an appropriate psychoeducational assessment in all areas of suspected disability. The tests and other assessment materials were not racially, sexually, or culturally discriminatory, and were provided and administered in the language and form most likely to yield accurate information. The psychoeducational assessment was conducted by an assessor trained and knowledgeable about Student's disability. The tests and other assessment materials were administered in accordance with the instructions provided by the producers of the assessments.

ORDER

The District conducted an appropriate assessment of Student pursuant to the legal requirements for an appropriate assessment.

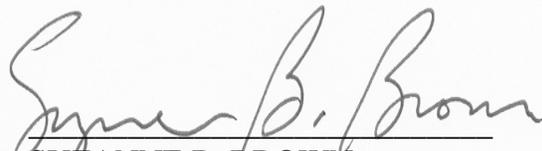
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute: The District prevailed on the issue.

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 ninety days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: February 22, 2008



SUZANNE B. BROWN

Administrative Law Judge
Office of Administrative Hearings
Special Education Division