

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

AMADOR COUNTY UNIFIED SCHOOL
DISTRICT & AMADOR COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010031647

DECISION

Administrative Law Judge Adeniyi A. Ayoade (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on August 31 and September 1, 2010, in Jackson, California.

Diana B. Glick, Attorney at Law, represented Student, and both parents (Parents) were present at the hearing. Student did not appear.

Carl D. Corbin, Attorney at Law, represented both the Amador County Unified School District (District) and the Amador County Office of Education (ACOE). Teresa Hawk, District's Executive and Director of County's Special Education Local Planning Area, was present on behalf of both District and County.

On March 25, 2010, Student filed a request for a due process hearing (complaint). A continuance of the hearing was granted on March 29, 2010. On June 10, 2010, Student filed a request to amend the complaint. On June 17, 2010, OAH granted Student's motion to amend the complaint, and the amended complaint was deemed filed on June 17, 2010.¹

At hearing, oral and documentary evidence were received. At the end of the hearing, a continuance was granted until September 10, 2010, to allow parties time to file closing briefs. Each party submitted its closing brief within the time allowed, and the record was closed on September 10, 2010.

¹ The filing of an amended complaint restarts all applicable timelines for the due process hearing. (20 U.S.C. §1415(f)(1)(B).)

ISSUE²

Did District's psychoeducational, speech and language (SAL) and occupational therapy (OT) assessments³ appropriately assess Student's autistic-like characteristics relating to his social interactions, auditory memory, and receptive language and sensory integration deficits?

PROPOSED REMEDY

Parents request that OAH direct District and ACOE to reimburse them for the costs of the SAL and OT independent educational evaluations (IEEs). Additionally, Parents request that District and ACOE fund additional psychoeducational, OT and SAL IEEs, and convene an individualized education program (IEP) meeting to review the additional IEEs.

CONTENTIONS OF THE PARTIES

Parents contend that District and ACOE failed to appropriately assess Student in all areas of suspected disability, including those areas relating to Student's autistic-like characteristics, auditory memory, and receptive language and sensory integration deficits. Parents further argue that they are entitled to reimbursement for the costs of their August 16, 2010 SAL IEE, and the August 17, 2010 OT IEE, because District's assessments of Student were incomplete and inappropriate. Finally, Parents allege that in order to determine whether Student is a child with autistic-like characteristics, additional OT, SAL, and comprehensive psychoeducational assessments are required.

District and ACOE argue that District's assessments of Student were complete, comprehensive and appropriate. District contends that it used appropriate assessments tools and did not use a sole criterion to determine that Student was not eligible for special education. Further, District and ACOE argue that appropriate and valid testing instruments were used for the assessment, the assessors were qualified to conduct the assessments, and

² This issue is as framed in the August 25, 2010's Order Following Prehearing Conference (PHC), and as further clarified at hearing. The ALJ has reframed the issue for the purpose of clarity. In his PHC statement, Student withdrew, without prejudice, "Issue No. 1" in his amended complaint relating to whether District and ACOE denied Student a free appropriate public education from May 18, 2009, through June 10, 2010, including the extended school year because the IEP team did not find Student eligible for special education.

³ The psychoeducational and speech and language assessments were part of District's multidisciplinary team assessment, the results of which were presented in a report dated May 10, 2010, and reviewed at the IEP meeting held on May 13, 2010. The OT assessment report, also dated May 10, 2010, was presented at an IEP meeting held on June 2, 2010.

Student was adequately assessed in all areas of suspected disability. Both the District and ACOE contend that the assessments completed by District provided Student's IEP team with useful and sufficient information about Student, enabled the IEP team to determine Student's level of functioning, and allowed the IEP team to address the question of whether Student was eligible for services under the Individuals with Disabilities Education Act (IDEA). Therefore, because District's assessments of Student were appropriate, all of Student's requested remedies should be denied.

FACTUAL FINDINGS

Background

1. Student is a boy who is four years and four months of age. He resides with his Parents within the boundaries of District and is not currently enrolled in a public education program.

2. Student has received early intervention behavior services from the Valley Mountain Regional Center (Regional Center) since May 2009. Amy K. Brown, Ph.D., a licensed clinical psychologist and the Regional Center's psychologist, conducted the intake developmental psychological assessment of Student for the Regional Center and diagnosed Student with autism spectrum disorder (autism) in 2009.⁴ The Regional Center's intake assessment determined that Student's mild sensory issues, social skills, and pragmatic language skills were delayed for his age. In her report, Dr. Brown opined that Student would benefit from increased intervention from a qualified specialist in a home or school environment, techniques such as discreet trial training, structured teaching, a developmental approach to intervention, as well as parental training. Other interventions were also recommended. As a result, Student has participated in a home-based Head Start Program (Head Start) and has received behavior services from the Amador-Tuolumne Community Action Agency.

3. District held an initial IEP meeting for Student on August 17, 2009. Parents, necessary members of the District's IEP team, and representatives of the Regional Center and Student's Head Start program were present. Ms. Stacy Sidey, ACOE's speech and language pathologist, who was also there, had conducted a SAL assessment of Student on March 11, 2009, for the Head Start program. She informed the IEP team that student was recently assessed by the Regional Center, and presented Student's Head Start history. Student's pre-academic, academic, communication, social/emotional and behavioral, gross and fine motor, and vocational functional skills, as well as his adaptive and daily living skills and general health were also discussed.

⁴ Dr. Brown did not testify at the hearing and her evaluation report dated May 12, 2009, was received at the hearing as hearsay evidence.

4. The IEP team members determined that Student was not eligible for special education services. They recommended that Student participate in a general education pre-school program and continue to receive in-home Head Start program and services. Mother acknowledged that she understood that Student was not eligible for special education at that time, and consented to the finding on the IEP documents that Student was not eligible for special education.

5. On March 11, 2010, Mother wrote to District and advised it that she was revoking her consent to the August 17, 2009 IEP team's finding that Student was ineligible for special education, and requested that a new IEP meeting be held.

6. On March 12, 2010, in response to Mother's request for an IEP, District presented Parents with an assessment plan for an initial assessment of Student in areas of academic achievement, health, intellectual development, language and speech communication development, and social, emotional, and adaptive behavior. Also, Student's Head Start teacher would be interviewed. District witnesses established that at the time of the assessments, Student's areas of suspected disability included autism or "autistic-like behaviors," severe emotional disturbance, specific learning disability, and speech and language functioning. The assessments were to determine Student's eligibility for special education services.⁵ Parents consented to the assessment plan on March 25, 2010.

Assessment Requirements

7. A school district is required to assess Student in all areas of suspected disability to determine special education eligibility. The district must administer assessments in the language and form most likely to yield accurate information on what Student knows and can do academically, developmentally, and functionally, unless it is not feasible to do so. The assessments must be conducted by persons who are knowledgeable and competent to perform the assessments. Tests and assessment tools must be used for purposes for which they are valid and reliable, administered in conformance with the instructions provided by the producer of the tests, and in the language and form most likely to yield accurate information. No single measure can be used as the sole criterion for determining whether a student is eligible for special education, or whether a particular special education program is appropriate.

District's Multi-Disciplinary Assessments

8. On April 19, 26, 29 and May 4, 2010, Kevin Wood, District's school psychologist, Gretchen Carlson, District's school nurse, Muriel Stettler, District and ACOE's special education specialist, and DeAnn Fine, speech-language pathologist assessed Student

⁵ Eligibility is not an issue for resolution in this due process hearing.

as members of a multi-disciplinary team (MDT).⁶ Student was assessed in the areas of cognitive and pre-academic functioning, social, behavior and adaptive behavior functioning, and speech and language functioning. Ms. Carlson performed a health update on Student. District's witnesses credibly testified that all areas of Student's suspected disability were assessed. The assessors prepared a combined psychoeducational and speech and language assessments' report dated May 10, 2010. The assessment team reviewed Student's Regional Center records, including the developmental psychological assessment report of Dr. Brown. They observed Student at home and District offices, and conducted interviews with his parents and Student's Head Start teacher, Ms. Heather Hall.

Social, Behavior and Adaptive Behavior Functioning

9. On April 29, 2010, the four members of the District's MDT visited Student's home to observe him as part of the assessments. While at Student's home, the team observed Student's interaction with his brother and Ms. Fine informally assessed Student's speech by listening to him. The team members spoke with Parents. Student was assessed over the four sessions in both home and school environments.

10. Mr. Wood administered the Behavior Assessment System for Children, Second Edition (BASC-II), a multidimensional test that measures numerous aspects of behavior and personality. The BASC-II is designed to facilitate the differential diagnosis and educational classification of a variety of emotional and behavior disorders in children. Ms. Hall and Father completed rating scales from the BASC-II. The results showed that Student was delayed in his adaptive functioning when compared to same-age peers. Issues relating to hyperactivity, aggression, atypicality,⁷ withdrawal and attention problems were identified.

⁶ Mr. Wood holds a master's degree in psychology. He is a licensed and credentialed school psychologist. He has been a school psychologist for about six years and has conducted between 75 and 100 assessments. He has experience working with autistic students and has participated in many autism specific trainings. He was qualified as an expert witness.

Ms. Stettler holds a bachelor's degree in liberal studies. She has been credentialed to teach children with moderate to severe disabilities for about 12 years and teaches ACOE's special day class for students in kindergarten to the third grade. She has participated in many autism specific trainings and has experience conducting assessments of children with autism.

Ms. Fine has both bachelor and master's degrees in speech pathology and audiology. She is credentialed, and has participated in many autism specific trainings. Ms. Fine works for ACOE, and has experience assessing and treating students with SAL disorder, including those with autism spectrum disorder.

⁷ Not typical, not conformable to the type or normal form.

11. Mr. Wood did not believe that Student's elevated behavior indicators on the BASC-II were the results of any underlying emotional issue. Rather, he explained that, they were transient social maladjustments, which Student was experiencing due to lack of a socially enriching environment (like a classroom-based program) where Student would have access to a structured program. According to Mr. Wood, such a structured program, within typically developing social and emotional models, and an academically enriched environment, would benefit Student. He believed that the home-based Head Start program and behavior support were having positive effects. Thus, he recommended that Student continue to receive behavioral interventions and supports, and be provided with increased access to same-age peers.

12. Mr. Wood administered the Kaufman Assessment Battery for Children, Second Edition (KABC-II), to measure Student's cognitive functioning. Student's performance on the KABC-II indicated average functioning for his age in all areas measured, with the exception of the Atlantis subtest, where Student scored in the below average range. The Atlantis measured attention and memory. Mr. Wood testified that he was not concerned about the low score on the Atlantis subtest, as Student was uncooperative during that part of KABC-II. He credibly explained that Student scored in the average range in the "Word Order" subtest of the KABC-II, which also measures memory and attention. Based on the KABC-II, Student achieved a Mental Processing Index of 93, and was in the 32nd percentile rank⁸ for his age and was within the average or normal range of cognitive abilities.

13. Mr. Wood also administered the Adaptive Behavior Assessment System for Children, Second Edition (ABAS-II) to assess Student's social, emotional and adaptive behavioral functioning. The ABAS-II was completed with help of the rating scales completed by Ms. Hall and Student's Mother. The ABAS-II measures Student's daily living, communication, socialization and motor skills. In all but one area, Student's scores ranged from below to extremely low average range. Based on the several domains tested, Student achieved the following scores: communication (below average), functional pre-academics (average), home and school living (below average), health and safety (extremely low), leisure (below average), self care (extremely low), self direction (below average), and social (below average). Student's scores were organized to reflect Student's General Adaptive Composite (GAC) scores.⁹ Student's GAC score in the practical composite was in the first percentile and in the second percentile for both the social and conceptual composites. Student's scores reflect mild to profound deficits in most areas tested in ABAS-II. Even though eligibility is not at issue in this hearing, Student's low performance in the ABAS-II was not satisfactorily explained at the hearing.

⁸ As used in this decision, "percentile rank" is based on similarly aged children in the United States.

⁹ The General Adaptive Composite score (GAC) summarizes performance across all skills areas based on the information obtained in three categories: Conceptual Composite (Communication, Functional Academics and Self-Direction); Social Composite (Leisure and Social); and Practical Composite (Home Living, Health and Safety, and Self Care).

14. Parents' and Student's Head Start teacher completed the Gilliam Autism Rating Scale (GARS). Based on the GARS, Student had a standard autism rating index score of 109 based on Parent's rating, and a score of 131 based on the Head Start teacher's rating. The 109 score, if found reliable, could have placed Student in the category of someone very likely to have autism. Mr. Wood admitted that he did not report the results of the GARS, which he described as a mistake. He maintained that while an informal evaluation such as the GARS may be an important component of assessing autism, one cannot rely on the GARS alone. He explained that there were inconsistencies in the GARS results as reported by Mother, and when he attempted to clarify these with her, Mother was unable to explain the inconsistencies. He believed that Parents' responses in the GARS were compromised and influenced by Parents' belief that Student was autistic. Therefore, he concluded that the results of the GARS were invalid. Finally, he credibly testified that District assessors' and Student's Head Start teacher's observations of Student did not reveal the same concerns reported by Parents in the GARS.

15. Mr. Wood credibly testified that typical areas of concern for children with autistic-like characteristics, such as use of oral language and extreme withdrawal, were assessed by the MDT. His use of oral language was assessed by standardized testing, and observations. Also, the issue of whether Student was extremely withdrawn was determined based on the MDT's observations of Student, review of records, and information obtained from Student's Head Start teacher who had been working with him, according to Mr. Wood. He explained that, based on the assessments' results, Student did not have autistic-like characteristics when assessed. Therefore, the evidence established that Mr. Wood assessed Student in all areas of suspected disability, including the issue of whether Student has autistic-like characteristics. His assessment of Student met the statutory and regulatory requirements for special education assessments.

Cognitive and Pre-academic Functioning

16. Ms. Stettler administered the Brigance Inventory of Early Development (Brigance) on April 26, 2010, to assess Student's pre-academic functioning and general knowledge. The Brigance gives age equivalent (AE) scores for subtests that measure a student's levels of knowledge and functioning in a variety of areas. In the area of general knowledge, Student demonstrated he knew most of his body parts both receptively and expressively. Receptively, he achieved an AE score of 4.0 (four years and zero month), and an AE score of 3.5 expressively.¹⁰ He knew all of his colors (AE score of 7.0 when asked to name the colors, and an AE score of 6.0 when asked to point to the colors). He also achieved an AE of 4.0 in color matching. He was able to sort by color, shape and size (3.0 AE on each), and knew some shapes. He understood time concepts (3.0 AE), directional and positional concepts (3.6 AE), and some quantitative concepts (3.0 AE). He knew what to do in different situations (3.6 AE) and understood use of objects (3.6 AE). His knowledge of the weather was in the 5.0 AE. Regarding the understanding of design concepts, Student

¹⁰ Student was about three years and 11 months old when he was assessed by District.

could name (7.0 AE), point to (6.0 AE) and match (5.0 AE) design concepts. Student was reported to have some problems reciting the alphabet, counting, and understanding the concept of classifications. Student was not able to verbalize what to do in different situations (i.e. what do you do when you are sleepy?) and the roles of community helpers (i.e. where to go for services when you are sick?). His reading-readiness skills were at the three-year-old level.

17. During and prior to her formal assessment of Student, Ms. Stettler observed Student at home and in her office, reviewed records, and interviewed Parents. Regarding Student's pre-academic behaviors, Ms. Stettler observed and reported on Student's gross motor and fine motor skills, self-help skills, and language skills. Student was able to stand on one leg, jump, walk around and move around obstructions easily, and climbed a ladder. Student was able to draw a circle, put together a puzzle, hold a pencil in his fingers and build a stack of blocks with the other students. He was able to unzip the clothing from a doll, wash his hands and dry them without assistance. He imitated working skills in the kitchen areas such as cooking food, putting it on plates, and putting the plates in the sink. Student told stories while being tested, was vocal, curious and asked questions. He used six to seven word sentences, and stated his name and age. Student was noted to be polite, showed interest in what other students were doing and was able to follow a two step direction. Student was described as an active talker.

18. Ms. Stettler noted that the Brigance presented a comprehensive picture of Student's academic skills, and compared to the Brigance that was administered to Student in 2009, Student had shown some growth. She also noted that Student had good academic skills and tested in the 3.0 AE and 7.0 AE ranges placing Student in the average/normal range. She admitted that she had not administered all parts of the Brigance because OT and SAL assessments were going to be done. According to Ms. Stettler, and based on the Brigance, Student showed no evidence of cognitive or learning impairment, or academic issues. She described Student as verbal, curious and wanting to know everything around him, "unlike autistic children." Ms. Stettler observed Student interacting socially and appropriately for his age. Thus, she believed that Student did not have autistic-like behaviors or characteristics when assessed. However, based on some articulation issues noted in Student, Ms. Stettler believed that Student's SAL functioning should be reassessed in about six months and his academic functioning, within a year. District has offered to do that. If Student shows other academic needs, District may reassess Student sooner, with parental consent.

19. Under cross-examination, Ms. Stettler explained that certain portions of "Readiness" component of the Brigance were not administered to Student because he was too young and the tests were above his developmental age. She also admitted that she did not report his score on the Math component by mistake. She explained she "overlooked" it. At the time of the assessment, Student could not understand the time concept yet, so the assessment in this area was not completed, according to Ms. Stettler. There was no evidence offered at the hearing showing that these omissions were either material in the assessment of autistic-like characteristics, auditory memory and receptive language issues, or sensory

integration deficits, or that they otherwise rendered Ms. Stettler's assessment of Student inappropriate. On the contrary, the evidence established that Ms. Stettler appropriately assessed Student's cognitive, pre-academic and academic functioning.

SAL Functioning

20. District's speech and language pathologist, Ms. Fine, assessed Student's SAL functioning in her District office on May 4, 2010. At the time of the assessment, she understood that areas of suspected disability in Student included autistic-like characteristics, among others. Therefore, Ms. Fine explained that she used assessment tools that targeted Student's receptive, expressive, form, content and use of language. She considered Student's age and pragmatic functions. As part of the assessment, Ms. Fine observed Student, both at her office, and at home during the April 29, 2010 home visit. She reviewed Dr. Brown's report, other Student records, information provided by Parents, and medical information prior to conducting formal standardized testing.

21. Ms. Fine administered the Comprehensive Assessment of Spoken Language (CASL), which measures a child's receptive and expressive language skills. Student's basic concepts, pragmatic judgment and language, and skills relating to sentence completion, syntax and paragraph comprehension were specifically tested. Student achieved the following standard scores, percentile ranks, and AE performances, on the CASL respectively: Basic concepts - 87, 19th and 3.3; pragmatic judgment and language - 100, 50th and 4.1; sentence completion - 87, 19th and 3.0; syntax construction - 89, 23rd and 3.0; and paragraph comprehension - 79, 8th and 2.3. Student's performance in the CASL showed that Student was functioning in the average range for his age in most areas, with the exception of the paragraph comprehension subtest, where Student's score was in the below average range. Based on this subtest, Student demonstrated some articulation delays.

22. Student was also administered the Token Test for Children (Token), to measure his ability to follow direction, auditory memory and receptive language. This test provides a gross measurement of functional language. The assessor reported that Student was unable to complete the Token because Student was showing decreased attention due to fatigue, and Mother had arrived to pick Student up for home. Therefore, the result of the Token was not valid. Ms. Fine indicated that she did not re-administer the Token or substitute another test for it because she knew Student could follow directions, based on her own and others' observations of Student, as well as other information and the results of other assessments.

23. Finally, Ms. Fine administered the Goldman Fristoe Test of Articulation, Second Edition (GFTA-II) to Student, to measure Student's articulation. The test evaluates the correct pronunciation of speech sounds in single words. Student scored in the below average range on the GFTA-II. He obtained a standard score of 79, placing him in the 10th percentile rank, and a 2.5 AE. Student's score in the GFTA-II showed that Student had some fluency issues and articulation delays. Ms. Fine believed that this area needed to be

monitored. She explained that District offered to reassess Student's SAL functioning in six months from the date of the May 13, 2010 IEP.

24. Ms. Fine did not find the Student's articulation delays and fluency issues as demonstrated by the results of the GFTA-II concerning, as Student was able to use speech and oral language. She believed that the MDT assessments "got a very good picture of Student." Ms. Fine testified that, based on the observations of the MDT assessors and the results of all the assessments, she, the Regional Center personnel, and the Head Start program teacher and personnel did not believe Student had autistic-like characteristics or behaviors at the May 13, 2010 IEP team meeting. Ms. Fine explained that some of the behaviors noted in Dr. Brown's report no longer existed at the time of the MDT assessments. Based on all witnesses, Student was very verbal and "talks." Ms. Fine explained that Student was able to ask questions, make requests, and had a lot of communicative intents. Student was "a good communicator." Ms. Fine believed Student was unlike other autistic children.

25. Student's witness, Jane deGelleke,¹¹ testified that the use of the CASL as a testing instrument by Ms. Fine seems inappropriate because the test has a huge age range, and when tested, Student was only three years and 11 months and was in the lower end of the age cut-off for the test. Also, Ms. deGelleke believed that the use of the Token and GFTA-II tests by District were also inappropriate because the information obtained in these tests are minimal as compared to other tests for children with autism.

26. During cross-examination, Ms. deGelleke admitted that, at the time CASL was administered to Student, it was appropriate based on Student's age of 3 years and 11 months. She also agreed that, as reported by District's assessors, Student demonstrated a higher level of social functioning than she observed during her assessment of Student. She also conceded that she did not administer a standardized testing to assess Student's language, and that District did - the CASL, which District administered to Student in the area of pragmatics. Prior to, or during, her assessments of Student, she did not observe Student socially or review any of Student's IEPs. She did not review District's MDT or SAL assessment report, or Dr. Brown's report regarding Student's autism diagnosis. She did not speak with any of the District's assessors, staff at the Regional Center, or Student's Head Start teacher. She knew Student was autistic based on Parents' interview. Regarding her clinical observations of Student and the discrepancies in the quality of social interactions reported by her, she admitted that her assessment of Student took place in only one session, and lasted about 90 minutes. Finally, she conceded that District's MDT assessments were more comprehensive because they took place over four sessions in home and District's office settings.

¹¹ Ms. deGelleke holds both bachelor and master's degrees in speech and language pathology and a speech pathology license issued by the state of California. She is trained in Applied Behavior Analysis and has consulted with school districts. She is the owner of the American River Speech, which provides evaluation, treatment and consultation services to individuals diagnosed with autism spectrum and related disorder.

27. Therefore, and based on the totality of the evidence, Student's SAL functioning, including his receptive, expressive and pragmatics language were appropriately assessed. The evidence supports a finding that the SAL assessment was appropriate.

District's OT Assessment

28. On April 6, 2010, District sent Parents an OT assessment plan, to evaluate Student in the area of motor development because of concerns related to Student's motor skills. The assessment plan was dated April 29, 2010, and Parents consented to the OT assessment plan on or about May 8, 2010. On May 10, 2010, ACOE's occupational therapist, Susie Randolph, conducted the OT assessment of Student and prepared an assessment the same day. Ms. Randolph holds a bachelor's degree in occupational therapy and is licensed by the California Board of Occupational Therapy. She is a member of the American Occupational Therapy Association and has a certificate from the National Board of Certification in Occupational Therapy. She has worked as an occupational therapist for 27 years and for ACOE since 2003. She has experience conducting OT assessments for students with autism. As part of the assessment, Ms. Randolph obtained information from Parents regarding Student's sensory history, conducted interviews with Parents and Student's teacher, and reviewed Dr. Brown's report, other District assessments and Student's records.

29. Ms. Randolph administered the Peabody Developmental Motor Scales (Peabody) to measure Student's fine motor skills, and the Visual-Motor Integration (VMI)¹² subtest to measure Student's ability to use his visual perception skills to perform complex eye-hand coordination tasks. Student scored in the average range when these assessment tools were administered. Based on the sensory history provided by Parents, Ms. Randolph reported that Student "displays some behaviors, which suggest sensory processing issues," including, issues with tactile processing (i.e. seeking tactile inputs and showing dislike for "being touched"). The report of Ms. Randolph was presented and discussed at the IEP meeting of June 2, 2010.

30. At the hearing, Ms. Randolph explained that the purpose of her assessment was to evaluate Student's fine motor and sensory processing skills. She administered the Peabody to assess Student's fine motor skills only, but not his gross motor skills because gross motor skills was not an area of concern. Under cross-examination, Ms. Randolph was asked to explain a statement in her report to the effect that Student displayed behaviors that suggest sensory issues. Ms. Randolph explained that what she meant was that other tests may be needed. She did not use additional tests. She was not asked to identify what additional tests she would have offered and whether those would have been necessary, complementary or additional.

¹² Visual-motor integration involves the ability to coordinate visual and motor movements, such as copying simple images or handwriting.

31. Ms. Randolph described Student as excited, energetic and smiling on the day of the assessment. He was a bit distracted, but easily redirected. He maintained good rapport with her and completed all tests. Ms. Randolph had seen Student's OT IEE report by Ms. Lisa Silverthorn. She did not know why Student recorded extremely low scores in the area of fine motor skills functioning (less than one percent rank) in the OT IEE. She believed Student's attention varies based on whether he liked an activity or not. According to Ms. Randolph, Student's attention and focus issues were not concerning because he was easily redirected.

32. Ms. Silverthorn, Student's OT expert witness testified that she believed that Student's sensory issues were assessed appropriately by Ms. Fine. The only issue raised by Ms. Silverthorn was whether District's OT assessment was complete because Ms. Fine did not assess Student's gross motor skills. District's witnesses challenged Ms. Silverthorn's testimony that its assessment was incomplete. Ms. Randolph admitted that Student's gross motor skills were not formally assessed. However, Ms. Randolph explained that based on clinical observations of Student in various settings and information obtained by District from Parents, Student's gross motor skill was not an area of suspected disability. Ms. Randolph noted that, according to the sensory history provided by Parents, Student was frequently running, overly active and "he often jumps on beds and other surfaces," which activities, she believed, suggested that Student did not have any issue regarding his gross motor skills. At the hearing, Student was described as an over-active person, whose favorite activities include jumping, biking, and running. Further, the issue of whether Student's motor skills were properly assessed was not raised by Student as an issue to be resolved in this hearing. Therefore, the evidence established that Student's OT assessment was appropriate, and that Student's sensory integration and processing areas were appropriately assessed.

May 13, 2010 IEP Meeting

33. The results of the MTD assessments were presented and reviewed at the May 13, 2010 IEP meeting. Parents, personnel from the Head Start program, including Student's teacher, the disabilities specialist and disabilities manager were present. Representatives of the Regional Center and all required members of District's staff were also present. The IEP team reviewed the MDT assessment report, information provided by Parents and Student's Head Start teacher, and the report of Dr. Brown. They discussed Student's present levels of academic achievement and functional performance, based on information obtained from his Head Start teacher, Ms. Heather Hall. Mr. Wood presented the results of the cognitive and social, behavior and adaptive behavior functioning assessments, while Ms. Stettler presented the results of the academic assessment. Ms. Fine reviewed the results of the SAL assessment. The team noted that even though Student was diagnosed with autism in May 2009, and attention was identified as an area of need, Student did not exhibit those related symptoms any longer. "Student transitioned easily and did not use sensory inputs as he had before," the IEP note explained.

34. The team discussed the issues relating to "autistic-like behaviors," which Student had demonstrated in the past and were reported in Dr. Brown's report. District's

assessors indicated that those behaviors were not observed during their assessments of Student in a variety of settings, both in testing and home environments. Student's Head Start teacher indicated that Student had made positive changes and recommended his enrollment in a "typical" preschool program, with the Regional Center behavior services continuing. Thus, the team determined that Student did not qualify for special education services. Due to concerns regarding Student's articulation and/or fluency, District offered to reassess Student's SAL functioning and development in six months, and his overall progress in 12 months. Parents did not consent to this IEP.

June 2, 2010 IEP Meeting

35. The IEP team members met again on June 2, 2010, to review the results of the OT assessment, which was not yet completed at the time of the May 13, 2010 IEP meeting. Ms. Randolph presented the results of the OT assessment. Parents and relevant members of District's IEP team were present. The IEP team members discussed the results of the assessment, and determined that Student did not require OT services to access school curriculum. Parents did not consent to this IEP.

Testimony by Dr. Paula Solomon

36. Student called Dr. Paula Solomon as his expert witness at the hearing. Dr. Solomon is a licensed clinical psychologist. She holds doctorate and master's degrees in clinical psychology and a master's degree in recreational education. She has experience conducting comprehensive psychological assessments of children and has testified in 11 due process hearings, mostly for students. She believed that District's MDT assessments were incomplete because no standardized testing was utilized to evaluate the issue of whether Student has autistic-like characteristics and behaviors, and also because the results of the GARS were not reported in the report. Although Dr. Solomon believed that the Brigance could be an important tool for autism assessments, she questioned whether District used the test appropriately because Ms. Stettler administered only one out of 11 components of the test. She noted that the gross and fine motor skills, self help skills, SAL skills, and math skills components of the tests were not completed. She expressed concerns that the scoring of the general knowledge and comprehension component of the test was based on category rather than individual areas. She believed that Student's below average score in the Atlantis raises some questions regarding whether Student's memory was a problem.

37. Despite the above, when asked whether District's MDT assessments were adequate and appropriate, Dr. Solomon indicated they were appropriate, but that she has some concerns regarding the interpretation of the scoring. The scoring itself was okay, but she explained that "the reporting of the scoring was incomplete," because some of the adaptive components were missing in the report. Under cross-examination, she admitted that Student's low score in the GARS based on Parents' report was insufficient by itself to determine that Student was autistic. However, Dr. Solomon believed that the results of the GARS should have been reported "based on best practices," and because Student had done so poorly in the GARS, additional assessments should have been conducted. She believed

that the GARS “tends to under-identify children.” She explained that a full-scale cognitive test like the Wechsler Intelligence Scale for Children or a full developmental inventory like the Brigance would have been appropriate.¹³

38. Under cross-examination, and regarding her opinion that the Brigance was incomplete because one out of 11 sections were completed, Dr. Solomon admitted that those areas of the Brigance not completed (e.g. OT and SAL) could have been evaluated with other individual tests, just like District did in this case. She admitted not knowing whether Student was/is autistic, because she “has not assessed him,” and she did not have enough information to determine whether Student qualifies for special education services. She did not believe that Student should have been assessed in areas where he was not suspected of having a disability. Further, she did not think that there is a legal standard regarding the number of tools an assessor must administer in an assessment. She believed that “those choices are made based only on professional judgments.” According to Dr. Solomon, a typical assessment should include all forms of assessments, including observation, gathering and review of information about the student and interviews with individuals, in order to determine autistic-like behaviors in children. She believed that District did all of those, as well as administered standardized testing in its assessments of Student. She believed that MDT assessments are generally better than individual assessments, and that multiple-session assessments are better than single-session assessments for children suspected of autism. She conceded that District’s MDT assessments were conducted over four sessions, while each of Dr. Brown, and Student’s IEEs’ assessors in OT and SAL only met with Student once.

Sole Criterion to Determine Eligibility

39. District used a variety of assessment tools and strategies to assess Student and gather information relevant to determining whether Student was eligible for special education services. District’s assessment included a review of Student’s records, prior assessments, interviews, the administration of standardized tests, and numerous observations. District did not use a single measure as the sole criterion in its assessments of Student.

Valid and Reliable Assessment Tools

40. Student contends that District’s use of the CASL was not appropriate because Student was in the lower age range of the CASL. CASL is designed to be used with children between the ages of three and 22 and Student was three years and 11 months when assessed, thus the use of the CASL was appropriate. Further, the failure to report the GARS, in the MDT assessments report, did not render District’s assessments inappropriate, as District used other assessment tools, including observations and interviews to evaluate Student’s pragmatic language skills and known areas of suspected disability in Student. Therefore,

¹³ The Brigance was administered to Student by District.

District used technically sound assessment instruments for purposes for which they are valid and reliable. The assessments were conducted in English, Student's primary language.

Personnel Knowledgeable about Student's Purported Disability

41. Persons knowledgeable about the student's suspected disability, which in this case included an autism spectrum disorder, shall conduct the assessments. Each of District's assessors testified that they were aware of all areas of suspected disability for Student, including, autistic-like characteristics, auditory memory, receptive language and sensory integration deficits. They reviewed prior assessment reports including Dr. Brown's report, Student's records, Early Start history, and spoke with Parents and Student's Head Start teacher, Ms. Hall. Each District assessor also observed Student two times. Mr. Wood has worked as a school psychologist for District for about six years, Ms. Stettler for ACOE for over 12 years and Ms. Randolph as been an occupational therapist for about 27 years. Ms. Fine also has years of experience as a speech and language pathologist. Each District assessor has experience assessing students to determine if they are eligible for special education services under the category of autistic-like behaviors. Each has participated in many IEPs and has worked with teachers and parents regarding Students' educational, social and behavioral needs. They were all qualified and experienced, and they are knowledgeable in using the legal criteria to determine whether children are eligible for special education services due to autistic-like behaviors.

42. Thus, evidence established that all of District's assessors are trained and qualified to administer the assessment tools that they used. They used clinical observation, administered several standardized tests, and used the tests for purposes for which they were valid and reliable. Multiple test tools were utilized and no one test was used, solely, to reach a conclusion. Based on the evidence, the tests were not racially, culturally or sexually discriminatory. Prior to, or during, the assessment, the assessors reviewed Student's file, and conducted teacher and parent interviews regarding Student. District's assessors credibly explained that tests were chosen and administered according to Student's suspected deficits areas and needs and that not all subtests were administered.

IEEs

43. If a parent disagrees with an assessment obtained by a public educational agency, the parent has the right to obtain an IEE at public expense under specified circumstances. The parent must notify the school district that the parent disagrees with the assessment and request that the school district conduct an IEE at public expense. Faced with that request, the school district must provide an IEE at public expense, or deny the request and prove that its assessment is appropriate in a due process hearing.

OT IEE by Ms. Silverthorn

44. Ms. Silverthorn conducted an OT IEE of Student on August 17, 2010, on behalf of Parents. Ms. Silverthorn indicated that the purpose of the assessment was to

evaluate Student's fine and gross motor skills and current level of sensory integration and procession skills. Ms. Silverthorn holds a bachelor's degree in occupational therapy. She is licensed by the California Board of Occupational Therapy and credentialed. A member of the American Occupational Therapy Association, she is the owner of Jabbergym, Inc., which provides OT evaluation and treatment services to children since 2007. As part of her assessment, she obtained Student's health and developmental histories, including Student's diagnosis with autism in 2009, from Parents through interview and questionnaire. As assessment tools, Ms. Silverthorn performed a clinical observation of Student, reviewed Parents' report and administered the Sensory Processing Measure (SPM), and the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2).¹⁴ Her assessment of Student costs \$570.00.

45. Ms. Silverthorn assessed student over one session, and spent about two hours assessing Student - about 90 minutes with Student and 30 minutes with Parents. She knew Student is autistic because Parents informed her. She did not review any of Student's IEPs or other evaluations reports, including Dr. Brown's report or District's MDT assessments report, because Parents did not provide her with copies. She admitted that it would have been helpful if she had received and reviewed those reports at the time of her assessment of student. Regarding the discrepancies in Student's fine motor skills performances and scores in the District's Peabody test, and her BOT-2 test, Ms. Silverthorn explained that most parts of the BOT-2 subtests are timed, while only one part of the Peabody (the buttoning and unbuttoning) is timed. The Peabody looks at the details of performance. Also, according to her, children with autism perform differently on different days and settings. Thus, results may vary. As part of the assessment, she did not observe or assess Student at home and did not speak with any of the District's assessors or Student's Head Start teacher, which she described as "not typical."

¹⁴ The SPM is a norm-referenced evaluation tool that illustrates a child's sensory processing abilities across environments. The SPM was completed based on Parents' report on Student's sensory behaviors. The BOT-2 was designed to measure motor proficiency in the four areas of fine manual control, manual coordination, body coordination and strength and agility. Based on the SPM and her observation of Student, She concluded that Student had some problems in the areas of social participation, vision, balance and motion, planning and ideas, and noted Student's tactile responses as "dysfunctional." Overall, Student performance indicated some problems, based on the SPM. In the BOT-2, Ms. Silverthorn reported that Student did not complete all of the areas of the test, but only the fine motor section involving motor precision and integration. Based on the completed portion of the test, Student scored in the well below average and in the less than one percentile rank according to Ms. Silverthorn. She also concluded that Student had significant sensory integration, processing challenges and motor delays.

SAL IEE by Ms. deGelleke

46. Ms. deGelleke conducted a speech and language assessment of Student on August 16, 2010, on behalf of Parents. The assessment took place in one session, which lasted about 90 minutes. Mother was present throughout the assessment. The purpose of her assessment was to determine Student's current skills in the areas of receptive and expressive language, speech, and social communications skills. Ms. deGelleke administered the Preschool Language Scale, Fourth Edition (PLS-IV), the Expressive One-Word Picture Vocabulary Test (EOWPVT) and the Goldman Fristoe Articulation Test (GFAT).¹⁵ She also conducted clinical observation of Student's pragmatic language skills. Based on her assessments, Ms. deGelleke believed that Student demonstrated strengths in verbal imitation and choice making. He responded well to transitions between activities. He was able to maintain social games and activities. Ms. deGelleke reported issues with syntax errors, attention span and task completion, inconsistent eye gaze and Student's ability to engage in reciprocal communications and interactions. Her assessment of Student cost \$412.00.

47. At this hearing, the evidence did not establish when or whether Parents notified District of their objection to District's assessments and/or request for IEEs prior to obtaining the SAL and OT IEEs. In any case, because District's assessments were appropriate, Parents are not entitled to IEE at public expense.

LEGAL CONCLUSIONS

1. As the petitioning party, Student has the burden of proof on the sole issue in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) The party who filed the request for due process has the burden of persuasion at the due process hearing.

¹⁵ The PLS-IV was administered to assess Student's receptive and expressive language, and the EOWPVT to assess Student's ability to identify one-word vocabulary items in pictures. Regarding Student's receptive and expressive language, Student was within normal limits in both auditory comprehension and expressive communication as Student achieved an AE performance of 4.1. In the EOWPVT, Student scored in the below average range and achieved an AE of 2.10. The GFAT was administered to assess Student's speech sound and articulation. Student's voice and fluency were within normal limits, but presented with sound-in-words errors, placing Student in the seventh percentile rank in this area.

*Appropriateness of District's Assessments*¹⁶

2. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1) (2006).) 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 for 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). (2006).) The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304(b)(3) (2006).)

3. Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) Trained personnel must administer the tests and assessment materials in conformance with the instructions provided by the producer of such tests. (Ed. Code, § 56320, subs. (a), (b); 20 U.S.C. § 1414(b)(2), (3).) Tests and assessment materials must be validated for the specific purposes 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 primary language or other mode of communication, unless this is clearly not feasible. (Ed. Code, § 56320, subd. (a); 20 U.S.C. § 1414(a)(2), (3).) The assessors shall prepare a written report, or reports, as appropriate, of the results of each assessment. (Ed. Code, § 56327.)

4. The issue in this case is whether District’s psychoeducational, SAL and OT assessments appropriately assessed Student’s autistic-like characteristics relating to his social interactions, auditory memory and receptive language, and sensory integration deficits. Based on Factual Findings 15, 19, 27, 32 and 39 through 42, and Legal Conclusions 1-3, District demonstrated by a preponderance of the evidence that its psychoeducational, SAL and OT assessments, administered between April and May 2010, appropriately assessed all known and suspected areas of Student’s disability, including, autistic-like characteristics/behaviors, severe emotional disturbance, specific learning disability, and speech and language functioning. Qualified assessors conducted the assessments. Each of the assessors had performed hundreds of assessments using the same instruments. In each assessment, the assessor used a variety of assessment instruments to assess Student. The assessment instruments were used for purposes for which the assessments are valid and reliable. No single measure was relied upon solely. The assessments were not racially or culturally biased. The assessments resulted in comprehensive written reports that included observations, interviews, and interactive activities with Student. The reports included

¹⁶ An evaluation under federal law is the same as an assessment under California law. (Ed. Code, § 56302.5.)

relevant assessment results, consideration of Student's needs, and reasoned recommendations regarding needs and services. The assessments were discussed with Parents at IEP team meetings on May 13, 2010, and June 2, 2010, as required by law. Thus, the evidence established that District's psychoeducational, SAL and OT assessments were appropriate, with Student's autistic-like characteristics relating to his social interactions, auditory memory, receptive language, and sensory integration deficits appropriately assessed.¹⁷

IEE

5. Under Education Code section 56329, subdivision (b), if a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to obtain, at public expense, an IEE under certain circumstances. (20 U.S.C. § 1415(b)(1); see also 34 C.F.R. § 300.502 (a)(1)(2006); Ed. Code, § 56506, subd. (c).) The parent must notify the school district that the parent disagrees with the assessment and request that the district conduct an IEE at public expense. Faced with that request, the school district must provide an IEE at public expense, or deny the request and prove that its assessment is appropriate in a due process hearing. (Ed. Code, § 56329.)

6. Based on Factual Findings 47, and Legal Conclusions 5, Student is not entitled to an IEE at public expense because District demonstrated that its MDT and OT assessments were appropriate. Further, in this hearing, the evidence did not establish that Parents notified District prior to obtaining their OT and SAL IEEs that they disagreed with District's assessments, or requested that District fund an IEE at public expense.

ORDER

1. District's psychoeducational, SAL and OT assessments appropriately assessed Student's autistic-like characteristics relating to his social interactions, auditory memory and receptive language, and sensory integration deficits.

2. Student is not entitled to an IEE at public expense.

3. Because District's assessments were appropriate, Parents' request that District and ACOE convene an IEP meeting is denied.

¹⁷ Even though certain issues were raised regarding Student's performances in some of the tests, and whether certain scores demonstrated deficits that may require services in certain areas, this decision does not address any issue relating to what Student's scores or performances may mean in the context of eligibility determination.

PREVAILING PARTY

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

RIGHT TO APPEAL THIS DECISION

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

Dated: October 19, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings