

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

LAWNDALE SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013070160

**DECISION**

Elsa H. Jones, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter on September 23 through September 24, 2013, in Lawndale, California.

Lawndale Elementary School District (District) was represented by Debra K. Ferdman, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo. Elizabeth Vracin, Director of Special Education for the District, was present on both hearing days.

There was no appearance on behalf of Student or his mother (Mother). Neither Student nor Mother (collectively, Student), was present at any time during the hearing. They had been duly notified of the hearing dates and location.

District filed its request for due process hearing (Complaint) on July 1, 2013. On July 24, 2013, OAH granted District's request for a continuance of the matter.

Sworn testimony and documentary evidence were received at the hearing. On the last day of hearing, District requested to file a closing brief by no later than October 11, 2013, at 5:00 p.m. District's request was granted, and a continuance was granted so that District could file a closing brief. District timely filed its closing brief on October 11, 2013. At that time, the record was closed and the matter was submitted.

## ISSUES<sup>1</sup>

1. Whether the District's triennial psychoeducational assessment of February 2013, was appropriate such that Student is not entitled to an independent educational evaluation (IEE) at District's expense;
2. Whether the District's triennial academic assessment of February and March 2013, was appropriate such that Student is not entitled to an IEE at District's expense;
3. Whether the District's triennial speech and language (LAS) assessment of February 2013, was appropriate such that Student is not entitled to an IEE at District's expense;
4. Whether the District's triennial occupational therapy (OT) assessment of February 2013, was appropriate such that Student is not entitled to an IEE at District's expense; and
5. Whether the District's triennial adaptive physical education (APE) assessment of February 2013, was appropriate such that Student is not entitled to an IEE at District's expense.

## FINDINGS OF FACT

### *General Background and Jurisdictional Matters*

1. Student is a 12-year-old boy, who has resided with his Mother in the District at all relevant times. At all relevant times he has been eligible for special education as a child with autism. Student's home school is Jane Addams Middle School, but beginning in January 2010, when Student was in third grade, Student's individualized education program (IEP) team placed him at the Speech and Language Development Center (SLDC), a California certified nonpublic school (NPS). At all relevant times, his District placement has been a special day class (SDC) at the SLDC, and at the time of the hearing, he was in the seventh grade.

### *Triennial Assessments*

2. In early 2013, when Student was in sixth grade, Mother consented to District performing triennial psychoeducational, academic, LAS, OT, and APE assessments of Student. She refused to consent to a health and developmental assessment. In February 2013, District commenced the triennial assessments.

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<sup>1</sup> For clarity, the issues have been re-numbered from the manner in which they were set forth in the Prehearing Conference Order.

### *Psychoeducational Assessment*

3. On February 13, 2013, Jill Foster, the District's school psychologist, performed the psychoeducational assessment of Student at the SLDC. On February 20, 2013, Ms. Foster wrote a report of her findings.

4. Ms. Foster received her B.A. in psychology from the University of California, Los Angeles (UCLA). She received her M.A. in school psychology from California State University, Northridge. She holds a Basic Pupil Personnel Services Credential and an Advanced Pupil Personnel Services Credential. The latter credential qualifies her to serve as a school psychologist. In August 2012, she completed the educational requirements necessary to be a Board Certified Behavior Analyst, and she will reach that status when she takes and passes the examination for that certification. She has been employed by the District as a school psychologist since September 1988.

5. In her report, Ms. Foster noted that Student was 11 years old and in the sixth grade at the SLDC, that his primary language was English, and that Student was African-American. The report stated that the purpose of the assessment was to determine whether Student met eligibility criteria as a student with autistic-like behaviors, and to address the need for continued physical education and related services. The report also stated that the assessment was to identify Student's present level of functioning in areas suspected to be problematic and to consider what changes or accommodations were necessary in Student's educational program.

6. The report noted the locations at which Student had attended school throughout his academic career. The report explained that the assessment team performed no health and developmental history because Mother did not give permission for any assessment in that area.

7. Ms. Foster's report noted that Student lived with his mother and older brother. The report commented that Student was neatly dressed and groomed. Under the heading of "Testing Behavior," Ms. Foster observed that Student did a "really good job" attending to the testing tasks, and he usually followed prompts and directions immediately. Student only rarely required her to repeat the prompts. When the assessment task called for toys, Student exclusively played with small, plastic sea creatures and he often held them in his hand while performing other tasks. He easily transitioned between tasks and playing with the toys.

8. Ms. Foster's report briefly summarized Student's previous school district assessments and their results, including Student's results on California state standardized tests. With respect to her assessment, Ms. Foster's report stated that Student's linguistic, racial, and ethnic background were considered prior to the selection and interpretation of evaluation procedures. Besides standardized assessment instruments, the assessment included records review, parent questionnaire, teacher reports, and student observation. The report stated that the assessments were valid estimates of Student's current level of functioning, and the tests were used for the purpose and population for which they were

intended. All test materials were administered by trained personnel in conformance with the instructions provided by the producer of the tests, and standardized procedures were maintained. Ms. Foster reported that she used an alternative assessment for Student, and that due to the Student's ethnicity, standardized instruments were not administered to determine intellectual functioning.

9. The report listed the categories of standard and scaled scores, and stated that Ms. Foster used the following formal assessment instruments: the Southern California Ordinal Scales of Development; the Vineland Adaptive Behavior Scales-II (Vineland-II); and the Gilliam Autism Rating Scale-2 (GARS-2).

10. Ms. Foster's report described the Southern California Ordinal Scales of Development as a criterion-referenced instrument to evaluate Student's cognitive functioning. Student's current basal level (the level at which he showed mastery of all of the areas), was at Preoperational Stage 1-Preconceptual Thought. In the general population, these skills were usually mastered between 2 and 4 years of age. Student's functional level was at Intuitive Thought, the second stage of Preoperational Development. These skills were typically manifested between ages 4 and 7, and Student had many, but not all, of the skills found at this level. Student's ceiling level, the highest level at which he passed at least some of the items, was at the Concrete Operations stage, which usually developed between 7 and 11 years of age.

11. Ms. Foster's report set forth Student's results on the Vineland-II, which was administered to Lisa McGuire (Student's teacher at the SLDC), and Mother. The report described the Vineland-II as a comprehensive assessment of personal and social sufficiency, and the composite score covers three domains of Communication, Daily Living Skills, and Socialization.

12. Student obtained a composite standard score of 80 (Moderately Low) on the teacher's rating form. Mother's rating form listed too many responses of "Don't Know" for Ms. Foster to compute a composite score or a score in any of the domains of Communication, Daily Living Skills, and Socialization.

13. The report described the Communication Domain as a measure of how a student listens and pays attention, and how he uses words to speak and write. Student's teacher rating gave him a standard score of 67 (Low) in this area, and it was an area of relative weakness when compared to the other domains. The Daily Living Skills domain evaluated a student's daily habits and hygiene, understanding about time, money, and math, and the ability to follow rules and routines. Student's teacher rating gave him a standard score of 84 (Moderately Low) in this domain. Ms. Foster's report noted that the personal subdomain was an area of relative strength for Student. He could toilet independently, find the gender-appropriate restroom, put on shoes, button buttons, and cover his mouth when coughing or sneezing. Student's teacher rating gave him a standard score of 95 (Adequate) in the Socialization Domain, and the report noted that this was an area of relative strength compared to the other domains. This domain measured how a student interacted with others,

used play and leisure time, and demonstrated responsibility and sensitivity to others. The report noted that Student showed an interest in other students his age and demonstrated friendship-seeking behavior. He replied to adult greetings and recognized emotions in others.

14. Ms. Foster's report summarized Mother's ratings for Student, even though Mother did not supply enough information for Ms. Foster to compute any scores. Ms. Foster's report also summarized Student's overall adaptive skills, based on standard scores from teacher's ratings, as being at the moderately low level, with relative strengths in his socialization skills and relative weaknesses in his communication skills. Teacher results found a wide span of age-equivalent scores that ranged from 3 years, 8 months to 7 years in Communication; 5 years, 8 months to 12 years, 3 months in Daily Living Skills; and 4 years, 9 months to greater than 18 years in Socialization. The report specified that the latter score was in the area of Play and Leisure Time within the Socialization Domain. Parent ratings ranged from age-equivalent scores of 7 years, 2 months in Written Communication; 7 years, 3 months in Personal Daily Living Skills; 7 years, 6 months in Domestic Living Skills; and 6 years, 5 months in Interpersonal Relationships/Socialization.

15. In the area of Social/Emotional/Behavioral, Ms. Foster's report stated that she administered the GARS-2 rating scales to Student's teacher and Mother, since Student has been eligible for special education as a student who exhibited autistic-like behaviors. The report stated that the GARS-2 estimates the likelihood that an individual has autism. Ms. Foster reported that the teacher rating gave Student an overall standard score of 79, which placed Student in the "Possible" range regarding whether he had autism. In this regard, Student's teacher's rating ranged from a standard score of 5 (3d percentile) in Social Interaction, to a standard score of 7 (16th percentile) in Stereotyped Behaviors, to a standard score of 8 (25th percentile) in Communication. Mother's rating gave Student an overall standard score of 61, which placed Student in the "Unlikely" range for the presence of autism. In this regard, Mother gave Student standard scores of 4 (2d percentile) in Stereotyped Behaviors, Communication, and Social Interaction. The report discussed specific behaviors, and stated that the GARS-2 defined the frequency of behaviors as follows: (1) Never Observed (rater has never seen the individual behave in this manner); (2) Seldom Observed (the individual behaved in this manner 1-2 times per 6-hour period); (3) Sometimes Observed (the individual behaved in this manner 3-4 times in a 6-hour period); (4) Frequently Observed (the individual behaved in this manner at least 5-6 times per 6-hour period).

16. Ms. Foster's report explained the GARS-2 subscale categories and compared the ratings of teacher with those of Mother. The report explained that Stereotyped Behaviors were usually a form of atypical behaviors observed in children with autism. Teacher's overall ratings on this subscale indicated a "very likely" probability of autism, while Mother's ratings indicated an "unlikely" probability of autism. Mother sometimes observed that Student avoided establishing eye contact, and seldom observed him rocking back and forth or flapping his hands or fingers. Student's teacher seldom observed avoidance of eye contact and frequently observed rocking back and forth while seated or standing. She also

seldom observed Student flapping his hands or fingers. Teacher sometimes observed that Student ate specific foods or refused to eat foods most others ate. She seldom observed that Student stared at objects for at least five seconds, flicked his fingers in front of his eyes for five seconds or more, spun objects not designed for spinning, or walked on his tiptoes.

17. The report explained that the Communication subscale referred to verbal and nonverbal communication. Teacher's ratings in this area indicated a "very likely" probability of autism, and Mother's responses indicated an "unlikely" probability of autism. Mother sometimes observed and teacher seldom observed that Student did not initiate conversations with peers or adults. Mother seldom observed that Student used pronouns inappropriately and did not use the word "I" to refer to himself. His teacher sometimes observed inappropriate use of pronouns and never observed the inappropriate use of "I". Student's teacher sometimes observed that Student repeated words. She sometimes observed that he would repeat words or phrases multiple times, and he inappropriately answered questions about a statement or story. Student's teacher also seldom observed Student to speak with a flat tone, look away when his name was called, not ask for what he wanted, and use "yes" and "no" inappropriately.

18. The report defined social ability as the ability to appropriately relate to people, events, and objects. The report stated that there was also disparity between teacher and parent ratings in this area. Teacher's overall rating generated a score in the "possible" range of probability of autism, but Mother's overall rating provided a score in the "unlikely" range of probability of autism. Student's teacher sometimes observed and Mother seldom observed that Student did certain things repetitively. Mother sometimes observed and Student's teacher seldom observed that Student avoided eye contact. Mother seldom observed and teacher never observed that Student responded negatively to commands, and Mother sometimes observed and teacher never observed that Student lined up objects in a precise fashion and became upset when this order was disturbed. Teacher seldom observed, but Mother never observed, that Student resisted physical contact, tended to refrain from affectionate responses, looked unhappy when he was being praised or humored, and could behave in an unreasonably fearful manner.

19. Ms. Foster's report stated that scores alone do not diagnose a disability or determine eligibility for special education services, but are used as a tool for obtaining a comprehensive picture of a child's overall functioning. The report noted that Student had been diagnosed with autism, and that his low score on the GARS-2 were a testament to his own strengths, the effectiveness of school and home interventions, and the progress he has made. Therefore, Ms. Foster's report concluded that, despite Student not receiving significant rating scores in all areas, his overall profile was consistent with the autism diagnosis.

20. Ms. Foster's report considered the definition of a student with autism under California law, and the report concluded that, based upon the assessment and previous assessments, Student continued to meet eligibility criteria as a student with autism. The

report recommended that Student continue to receive special education services that focused on academic and independent living skills.

21. Ms. Foster testified at hearing, and elaborated upon her professional experience and her assessment report. She has had training with respect to autism as part of her master's program, and has attended trainings and workshops with respect to children with autism throughout her career. She has assessed approximately 50 to 79 children with autism over her career, and has provided direct service to approximately 20 to 25 children with autism during her career. She has assessed approximately 75 to 100 children with cognitive deficits. She has administered the Southern California Ordinal Scales approximately 40 to 50 times. She has administered the Vineland-II two to three times, because it is a new test. She administered the previous edition of the Vineland approximately 30 to 40 times. She has administered the GARS-2 approximately 30 times.

22. Ms. Foster has been part of Student's IEP team for the last three to four years. Her assessment consisted of two hours of administering assessment instruments, two to three hours of records review, and telephonic interviews with Mother and teacher for about 15 to 30 minutes each. She spent about five to six hours writing her report.

23. Ms. Foster considered the assessment instruments that she used appropriate for Student, as they provided important information regarding his strengths and weaknesses in the cognitive, adaptive skills, and behavioral areas. The assessments overall showed that Student's autism and cognitive delays impacted his education, in that he would require curriculum modifications, and his communication deficits would make it difficult for him to participate in class and with his peers.

24. At the hearing, Ms. Foster elaborated upon the disparity between the ratings on the GARS-2 given by Student's teacher, and the ratings given by Mother. Ms. Foster explained that a parent's perceptions often differ from a teacher's perceptions, because teachers see more children, and that sometimes there are more expectations at school than at home. Furthermore, all participants at the IEP meeting at which the assessment was discussed agreed that Student was a child with autism.

#### *Academic Assessment*

25. Jorene R. Butacan, a District middle school autism special education teacher, performed Student's triennial academic assessment on February 5, 12, and 13, 2013, and on March 12, 2013. Ms. Butacan has been a District employee for 10 years, and for the past two years she has been an autism middle school teacher in the District. Previously, she was a basic skills elementary school teacher for two years, and prior to that she was a Learning Center teacher for students in resource and SDC's from kindergarten through fifth grade. She received her B.A. in liberal studies from California State University, Long Beach (CSULB), in 2003, and her M.Ed. in special education from National University in 2010. She holds a multiple subject teaching credential, a special education mild/moderate credential, and a California autism authorization certificate. Ms. Bucatan has attended in-

service trainings regarding autism, has attended autism conferences, and has attended non-violent crisis intervention courses. She has worked with children with cognitive deficits throughout her career.

26. Ms. Butacan wrote an assessment report dated March 13, 2013, which finalized a draft report that she had written on February 27, 2013. Her report noted Student's biographical information, including that his primary language was English. Her report referred to the psychoeducational assessment report for information regarding Student's academic background. The report stated that the assessment materials and procedures were selected and administered so as not to be racially, culturally, or sexually discriminatory, and were considered valid and reliable for the evaluation. The assessment included a review of Student's work samples, classroom observations, teacher input, and the following assessment instruments: Woodcock-Johnson III Form B, (WCJ-III), Brigance CIBS II Standardized Scores (Brigance), Focus on Phonics, Dynamic Indicators of Basic Early Literacy Skills (DIBELS), and the Developmental Reading Assessment 2 (DRA-2). With these tools, Ms. Butacan assessed Student in the areas of listening comprehension and oral expression, written language and spelling, reading skills and comprehension, and math computation and reasoning.

27. Ms. Butacan's report described the area of listening comprehension, which included listening ability and verbal comprehension. The report explained that the oral language area included linguistic competency, listening ability, and oral comprehension. Ms. Butacan measured listening comprehension using the WCJ-III. The Story Recall test measured aspects of oral language ability, including language development and meaningful memory. Student obtained an age equivalent score of 2 years, 10 months on this subtest. The Understanding Directions test required Student to listen to a sequence of directions presented via tape recording and follow the directions by pointing to objects in a picture in the correct sequence. Student obtained a 4 years, 8 months age equivalent score on this subtest. He did not consistently follow directional instructions (i.e., instructions using words such as "nearest," "smallest," "between," and "each") and multiple-step instructions. The Picture Vocabulary subtest required Student to point to and/or verbally identify the image presented. The subtest measured comprehension/knowledge, vocabulary development, and cultural knowledge. Student obtained a 5 years, 4 months age equivalent score on this subtest. Ms. Butacan used the Brigance as a second measurement of Student's listening comprehension skills. Student received a 6 years, 5 months age equivalent score on the Brigance.

28. Next, Ms. Butacan's report described the assessment in the area of reading skills and comprehension. The report described broad reading skills as including reading, decoding, reading speed, and reading comprehension. The report described basic reading skills as including sight vocabulary, phonics, and structural analysis skills.

29. The report described the results of Student's assessments in the letter-word recognition and phonics areas. Student obtained a 7 years, 8 months age equivalent score on the WCJ-III Letter-Word Identification test. The report also described Student's results on the Focus on Phonics informal assessment. On the phonological awareness section, after



being given auditory directions and auditory cues, Student could identify basic rhyming words. He could segment words in a sentence with the help of gestural prompts, and he could segment syllables and phonemes. He blended compound words and syllables independently after an example gestural prompt. He blended some phonemes using the same single gestural prompt. Student identified initial, final, and medial phonemes, after an example was provided, and he deleted sounds when asked to. He was able to substitute some sounds. On the print awareness section of Focus on Phonics, he correctly identified all upper case and lower case letters. He identified all of the digraphs and all but one blend. On the synthetic phonics session he correctly identified consonant sounds, long vowels, and short vowels. He identified consonant digraphs, consonant blends, some vowel digraphs, and some diphthongs. In the area of phoneme segmenting and blending he was able to say all the sounds and the whole word. In the Focus on Phonics informal assessment of vowel patterns, Student substituted some of the nonsense words for known words. On the structural analysis portion of Focus on Phonics, he identified root words and prefixes after an example was provided. He identified some suffixes, he identified compound words, and he could divide words into syllables. He identified contractions, but he could not write many of them.

30. The report stated that the Brigance was administered as a second measurement in these areas. On the Word Recognition Grade Placement subtest he received a 6 years, 6 months age equivalent score (1.1 grade equivalency). On the Word Analysis Survey subtest he received a 6 years, 8 months age equivalent score (1.3 grade equivalency). On the Basic Reading subtest Student scored a 6 years, 7 months age equivalent score (1.2 grade equivalency).

31. Ms. Butacan's report provided Student's scores on the DIBELS test. On the DIBELS Oral Reading Fluency, Student obtained a score in the 40th percentile for first grade reading fluency. On the Passage Comprehension section of the DIBELS, Student obtained an age equivalent score of 6 years, 10 months. He was consistently more successful with one-sentence-long passages than with passages that were longer. He was also more successful when he had visual support.

32. Ms. Butacan's report described Student's performance on the WCJ-III Reading Fluency test. This test measured Student's ability to quickly read simple sentences, decide whether the statement was true, and then circle "Yes" or "No," within a three-minute time limit. Student obtained an age-equivalent score of 7 years on this subtest. He read each sentence aloud, but required a verbal prompt paired with a gestural prompt to circle the answer.

33. Ms. Butacan's report stated that she used the Brigance as another measurement of Student's reading comprehension skills. On the Reading Vocabulary Comprehension Grade Placement subtest Student received a 6 years, 8 months age equivalent score (1.3 grade equivalency). On the Comprehends Passages, Student received a 6 years, 5 months age equivalent score (1st grade equivalency). Student's overall Reading Comprehension score was 6 years, 5 months age equivalent (1st grade equivalency).

34. The report described Student's performance on the DRA-2. Ms. Butacan gave Student a fiction story with picture support at the beginning first grade reading level, and a non-fiction picture book at the end of first grade level. Student used one to four words to describe the picture, and he read 134 words in three minutes and sixteen seconds with eight errors. Student required verbal prompts to retell the story. On the non-fiction picture book, Student read 174 words per minute in three minutes and nine seconds with seven errors. He was able to give some information about the story after he was given a verbal prompt.

35. Ms. Butacan's report described the WCJ-III tests in the areas of written language and spelling. The Broad Written Language cluster included production of written text, and combined Spelling, Writing Fluency, and Writing Samples. Student received an age equivalent score of 7 years, 7 months on this cluster. Writing Samples measured skill in writing responses to a variety of demands. Student received an age equivalent score of 7 years, 11 months on this test. He received an age equivalent score of 7 years, 6 months in Spelling. Writing Fluency measured skill in formulating and writing simple sentences quickly. Student obtained an age equivalent score of 7 years, 3 months on this test.

36. Ms. Butacan's report again stated that Ms. Butacan used the Brigance as another standard of measurement of these skills. On Spelling Grade Placement Student received a 7 years, 1 month age equivalent score (1.8 grade equivalency). On the Sentence Writing Grade Placement Test he received a 6 years, 5 months age equivalent score (1st grade equivalency). On overall Written Expression Student obtained a 7 years, 1 month age equivalent score (1.3 grade equivalency).

37. The report described Student's scores in the area of math computation and reasoning. The report stated that the Broad Math cluster on the WCJ-III included mathematics reasoning and problem solving, number facility, and automaticity. Student obtained an age equivalent score of 5 years, 9 months in Broad Math. The report described the Calculation test, which measured the ability to perform mathematical computations, and required addition and subtraction. Student obtained a 5 years, 11 months age equivalent score on this test. The report stated that Math Fluency test measured the ability to solve simple addition and subtraction quickly in a three-minute timed test. Student obtained a 5 years, 11 months age equivalent score on this test. The report described the Quantitative Concepts test, which measured knowledge of mathematical concepts, symbols, and vocabulary. Student obtained an age equivalent score of 5 years, 6 months on this test. The report stated that the Applied Problems test measured the ability to analyze and solve math problems. Solving the problem required the student to listen to the problem, recognize the procedure to be followed, and perform relatively simple calculations. The math problems were presented to Student orally, and some of the problems had visual support. Student obtained a 5 years, 5 months age equivalent score on this test.

38. The report stated that Ms. Butacan used the Brigance as a second measurement of Student's math ability. On both the Brigance Computational Skills Grade Placement Test and the Brigance Problem Solving Grade Placement Test, Student received age equivalent scores of 6 years, 5 months (1st grade equivalency). His overall Total Math score was also

an age equivalent score of 6 years, 5 months (1st grade equivalency.) Student also received a 6 years, 5 month age equivalency score (1st grade equivalency) on the Brigance Warning and Safety Signs test.

39. In her report, Ms. Butacan observed that Student was compliant and helpful, and he brought his pencil for each testing session. The report described Student's behaviors during the WCJ-III. When the testing items were progressively more difficult during the WCJ-III Applied Problems he appeared upset, as reflected in his rocking back and forth while his face strained and he began to cry. She redirected him and advised him he could say, "I don't know," if he did not know how to do something. On Math Fluency he said the problem out loud then the number he put as the answer. On Writing Fluency he required a gestural prompt to attempt the sentence. He included minimal spaces between the words he wrote, and he required verbal prompts of encouragement. He added the word "is" with the words in the word bank to compose a complete sentence. Ms. Butacan gave him verbal prompts to write the sentences. After writing three sentences she gave him a break. When he attempted to spell the word "elephant" he looked at the examiner after he said each letter, spelling it "enelaetants." Student used the provided pictures for support for various subtests on the WCJ-III Form B.

40. Ms. Butacan concluded her report by stating that Student's areas of relative need were in the areas of reading, reading comprehension, writing, math calculation, and listening comprehension. At the end of her report, she attached tables showing Student's WCJ-III scores, and explanations of the various WCJ-III tests.

41. Ms. Butacan testified at hearing and elaborated upon her professional experience and her assessment report. The assessment, which occurred at the SLDC, took place over four days, for approximately three hours per day. During the assessment, Student needed breaks. The breaks helped him to transition and to focus. Student played with his marine animal toys during the breaks. As part of the assessment process, Ms. Butacan spent from three to four hours talking on the phone with Student's teacher, and she spent approximately eight hours writing the report. Mother was present for the last day of the assessment, when Ms. Butacan administered the Focus on Phonics and DIBELS tests. Mother requested to be present at the assessment on the Assessment Plan she signed. Ms. Butacan believed it was unusual for parents to be present during assessment.

42. Ms. Butacan had training and experience in administering the assessment tools she used. She has administered the Brigance, a standardized test, approximately 30 times during her career. She has administered the WCJ-III approximately 75 times. She has administered the DIBELS, a non-standardized test, approximately five other times during her career. She has administered the DRA-2, a non-standardized test, over 100 times. She has given the Focus on Phonics test, a non-standardized test, approximately five other times. She followed the test instructions in administering all of the tests. She believed these tests were appropriate for Student, as they demonstrated how he functioned in these areas, his ability to identify letters and words, his academic knowledge, and the areas in which he needed more support for reading, writing, and math.

43. In her opinion, Student's autism hindered his ability to access the general education curriculum. The test results reflected that Student had better skills in reading and writing than in math, but that he would have difficulty accessing the grade level curriculum in all of these areas, and that he needed a modified curriculum in these areas. The test results were consistent with Ms. Butacan's discussions with Student's teacher. Ms. Butacan had shared the test results with Student's teacher prior to presenting the results at an IEP meeting, and Student's teacher expressed no disagreement with the results.

#### *LAS Assessment*

44. Julie Nesbit, the District's speech and language pathologist (SLP), assessed Student in LAS at the SLDC. Ms. Nesbit received her B.S. in business administration, with a minor in speech communication, from CSULB. She received her M.A. in communicative disorders from California State University, Fullerton. She has been an SLP with the District since 1998. She holds a Clinical Rehabilitative Services Credential in Language, Speech, and Hearing. She is a licensed SLP in California, and she holds a Certificate of Clinical Competence from the American Speech-Language Hearing Association.

45. Ms. Nesbit assessed Student on February 6, and February 12, 2013, and wrote a report of the results which is dated February 20, 2013. Her report noted that Student was an English-only speaker, that he was 11 years and 10 months old, and that he was in the sixth grade at the SLDC. The report stated that the testing was performed because it was time for a triennial assessment, and also to determine present levels of performance.

46. Ms. Nesbit used the following assessment tools: Expressive Vocabulary Test-2 (EVT-2); Comprehensive Assessment of Spoken Language (CASL) (Synonyms, Antonyms, Sentence Completion); Oral and Written Language Scales-2d edition (OWLS-II); Brigance Comprehensive Inventory of Basic Skills-II, Readiness-Oral Expression (Brigance Oral Readiness); Clinical Evaluation of Language Fundamentals-4th edition (CELF-4) Pragmatics Profile; Goldman-Fristoe Test of Articulation, 2d edition (GFTA-2); informal language sample; informal fluency assessment; and informal voice assessment. Ms. Nesbit wrote that she attempted to administer the CELF-4 Formulated Sentences subtest, but she discontinued it because Student was unable to understand the subtest's directions. Additionally, the assessment consisted of Ms. Nesbit meeting with Student's SLDC SLP's and Student's SLDC teacher, Ms. McGuire. Ms. Nesbit's report also stated that she gathered information about Student's interests from Mother during the language sample process. The report included a detailed description of each of the formal assessment instruments used, as well as of the informal language samples Ms. Nesbit obtained. The report noted that Mother assisted with prompts during the language sample portion of the assessment.

47. Ms. Nesbit's report referred to the psychoeducational assessment for background information and developmental and educational history. The report described Student's testing behavior. On the first day of testing, Student was able to focus during the assessment, and he was only distracted when there was a school-wide announcement. He received breaks during the testing process for scheduled school activities such as recess and

lunch. On the second day of testing, Mother accompanied Student during the assessment. With Mother there, Student moved to sit on the right side of Ms. Nesbit, even though she had requested he sit to her left, and Ms. Nesbit had moved so that he could sit to her left. Student attended to the assessment tasks on the second day of testing. He demonstrated echolalia when he responded to some of the test items and language sample prompts. Functionally, Student was able to respond to verbal language spoken by Ms. Nesbit and his teacher. With prompts, he responded to written work presented to him by the teacher.

48. The report listed Student's scores on the tests, and certain details about the language samples, which Ms. Nesbit interpreted later in the report. One part of the informal language sample involved Student looking at several books about ocean and sea life, which was an area of Student's interest, and describing their contents in response to a prompt. Another part of the informal language sample involved Student looking at pictures of farm, park, and classroom scenes, and describing the pictures in response to a prompt. The third part of the informal language sample involved Student telling a story using a wordless picture book. The fourth part of the informal language sample involved Student describing 25 individual picture cards by generating his own sentences. The fifth part of the informal language sample involved Student describing his class routine, after school routine, personal interests and meals, in response to a prompt, without visual support. The sixth informal language sample activity involved Student answering questions posed by Ms. Nesbit and Mother about his favorite TV shows.

49. Under the heading of Classroom Observation, Ms. Nesbit reported that she observed Student in the classroom at 10:00, after the testing. Student ate his snack at a table with other students. He greeted an instructional assistant. He threw his trash away independently and retrieved his pencil independently. During his writing assignment, he needed frequent cues/prompts from the teacher to develop ideas to write. The report noted that echolalia was evident when the teacher provided options for him to write about. He politely said to the staff, "I need to go to the bathroom please." Mother had been present in the classroom. As Mother was preparing to leave, he said, "Mom, don't forget to take care of [Student]. After lunch you can take care of me."

50. The report described Ms. Nesbit's interview with Student's teacher. She advised Ms. Nesbit that Student was a hard worker, he participated in class, and he behaved appropriately. He had difficulty with sentence formulation, but, when compared to his classroom peers, there was no obvious significant area of difficulty regarding his ability to participate and interact in a classroom.

51. In the report, Ms. Nesbit analyzed Student's assessment results. The report described articulation as the ability to make speech sounds. Formal and informal assessment of Student's articulation skills reflected that he exhibited developmental sound errors with certain phonemes at the single-word level. During the language sample he exhibited unintelligible speech when pronouncing some words. With a model, he could correct his pronunciation of some the words. The assessment process revealed that overall, Student's speech was more than 90 percent intelligible. However, Student's developing vocabulary

usage appeared to be impacting his correct pronunciation of words and might confuse the listener. Therefore, the report recommended that Student's articulation skills be monitored.

52. The report described Student's results on the expressive language portions of the assessment. The report described expressive language as the output of language. In the educational setting, it was involved in making requests, retelling a story or event, explaining a situation or problem, and answering questions. On the EVT-2, Student obtained a standard score of 64 (5 years, 11 months age equivalent). The report described this score as indicating the Student's expressive vocabulary knowledge was far below average. On the CASL Antonyms subtest, Student obtained a standard score of 44 (4 years, 2 months age equivalent). On the CASL Synonyms subtest, Student obtained a standard score of 40 (5 years, 1 month age equivalent). On the CASL Sentence Completion subtest, he obtained a standard score of 40 (2 years, 7 months age equivalent), which reflected that Student had significant difficulty with the ability to retrieve and express one of the few appropriate words that fit the meaning of a spoken sentence. On the OWLS-II Oral Expression subtest, Student received a standard score of 40 (3 years, 5 months age equivalent.). This score indicated that Student had difficulty with various expressive language tasks. Student displayed echolalia during this test. The report noted that the Student's percentage of correct sentences increased during the language sample when he was provided with picture support. He had the most difficulty describing television programs with correct sentence structure. The report concluded that formal and informal assessment results indicated that Student continued to exhibit a delay in the area of expressive language.

53. The report described receptive language as the way one understands language, and it is involved in following classroom directions, understanding oral presentations, understanding the meaning of questions, and understanding the intent of a speaker. Student's teacher informally provided the rating on the Brigance Oral Readiness, which reflected that Student could answer "who" and "when" questions, and could sometimes answer "why" questions. The Brigance Oral Readiness was given informally because Student was above the age level norms on this test. Student's classroom teacher rated Student on the Brigance Oral Readiness as compared to his classroom peers, and he received an overall rating of Average in Communication. Student obtained a standard score of 40 (5 years, 2 months age equivalent) on the OWLS-II Listening Comprehension subtest, which indicated continued difficulty with understanding language concepts. This assessment required Student to listen to prompts which included various language concepts, and then choose his response from a field of four pictures. Some of the concepts he did not understand included basic concepts such as "in front of" pronouns, and use of negation. Ms. Nesbit's report concluded that formal and informal results showed that Student continued to exhibit a delay in the area of receptive language.

54. In the area of functional communication, the report noted that Student's mode of communication was verbal. Student verbally communicated with SLDC staff and peers. The report recommended that goals should continue to address oral language development. Ms. Nesbit's report stated that Student's vocal quality (i.e., tone, pitch, loudness, and resonance) was informally assessed throughout the evaluation and was within appropriate

age and gender limits. The report defined fluency as the smooth flow of speech, which Ms. Nesbit also informally assessed throughout the evaluation. The report concluded that Student's speech fluency was within normal limits.

55. The report defined pragmatics as the ability to recognize and use appropriate and functional language. It included social communication, such as conversational skills and perspective-taking. Ms. Nesbit assessed Student's pragmatic speech by having Student's teacher complete the CELF-4 Pragmatics Profile. Student's score of 154 on this rating scale exceeded the criterion level of at least 136 when compared to his classroom peers in the NPS classroom setting. The report noted, however, that due to Student's autism the area of pragmatic language should continue to be monitored. The report also specified that of the three overall categories rated by Student's teacher, which were Rituals and Conversational Skills; Asking For, Giving, and Responding to Information; and Nonverbal Communication Skills, Student's teacher rated him lowest in the Rituals and Conversational Skills area.

56. The report stated that the assessment procedures were appropriate, valid, and reliable for the purpose of determining Student's current functioning. The assessment was conducted under standard conditions, except as noted in the report. Environmental, cultural, and economic factors were considered during the assessment, and those factors did not appear to be significantly interfering with overall school performance and adjustment.

57. The report concluded that formal and informal assessment indicated a delay in speech or language skills that adversely affected educational performance. The report recommended continued enrollment in the language and speech program, and stated that the IEP would determine appropriate placement and services. The report listed Student's handicapping condition/eligibility in expressive and receptive language, and in particular in the areas of syntax, morphology, semantics, and pragmatics. The report also stated that Student's speech should be monitored. The final page of the report provided a description of each formal assessment instrument Ms. Nesbit administered.

58. Ms. Nesbit testified at hearing, and elaborated upon her professional experience and her assessment report. She has performed 30 to 40 LAS assessments. She has assessed approximately 10 to 15 children with autism, and approximately 10 assessments of children with cognitive deficits. During her career she has worked with eight to 10 students who were similar to Student. She spent approximately 20 to 25 hours on the assessment and in preparing the assessment report. During the assessment, she learned from Student's SLP that he was part of a social skills group, and he was making progress in his ability to more easily formulate sentences. She learned from Student's teacher that he functioned in the classroom, with the classroom routines. Overall, his social skills and interactions were appropriate in that setting.

59. She observed Student in the classroom for approximately 30 to 40 minutes. She was trained in administering all of the tests she administered, and she had experience in administering each of them, except for the Brigance Oral Readiness, which she administered informally. She followed the instructions for administering the formal tests, and the

particular instruments that she selected were appropriate to learn how Student functioned in the areas tested. She administered the GFTA-2, because even though he had no prior IEP goal in this area, previous assessors had assessed him regarding articulation, and she noted during her assessment that he may have some pronunciation problems. In her opinion, her test results were accurate, in that they reflected his strengths and needs based on her observations, teacher input, the consistency with other tests given, the variety in the tests, and his previous goals.

#### *OT Assessment*

60. Patricia Gonzalez Briceno, O.T.D., the District's occupational therapist, performed the OT assessment of Student on February 1, 2013, and produced a written assessment report dated February 27, 2013. Dr. Briceno obtained both her B.S. in occupational therapy and her B.A. in psychology from the University of Southern California (USC) in 2005. She obtained her M.A. in occupational therapy from USC in 2006, and her doctorate in occupational therapy from USC in 2007. She also received an M.A. in gerontology from USC in 2008. In 2010, she completed the coursework to become a Board Certified Behavior Analyst. She has been employed by the District as an occupational therapist since December 2008. From August 2007 to December 2008, she was employed as an occupational therapist at USC's University Center for Excellence in Developmental Disabilities at Children's Hospital Los Angeles. From June 2006 to August 2007, she was an occupational therapist in the USC Department of Occupational Science and Occupational Therapy. From August 2007 to the present, she has served as a Long Term Fellow in the Leadership Education in Neurodevelopmental and Related Disabilities Training Program at USC. This program involves training and research regarding a variety of areas, including neuromotor disabilities, mental health and developmental disabilities, autism spectrum disorders, and sensory impairments. She is a licensed occupational therapist in California. She holds a certificate in Sensory Integration Intervention Training.

61. In her report, Dr. Briceno noted that she assessed Student at the SLDC, in his classroom, the OT office, the computer lab, and on the school yard. The report stated that Student was receiving OT pursuant to his then-current IEP at the level of 60 minutes of individual therapy per week. The report noted that Student's OT assessment was part of his triennial assessment to determine whether Student needed continued OT to access his current educational curriculum.

62. The report summarized the results of Student's previous triennial OT assessment, conducted in 2010. The report then stated that the current assessment was a valid assessment, and used the following measures and instruments: interviews with Ms. McGuire, Student's teacher; interviews with current treating occupational therapist (Ms. Carol Overduin); Review of past records; Clinical observation from a developmental and sensory integrative perspective; the Beery-Buktenica Developmental Test of Visual Motor Integration; the Beery Visual Motor Integration (VMI) Developmental subtests of Visual Perception and Motor Coordination; the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2), subtests 1 to 3 (Fine Motor Precision, Fine Motor Integration, and



Manual Dexterity); and the Sensory Processing Measure (SPM), which was completed by Ms. McGuire. The report stated Dr. Briceno's opinion that the assessment was a valid representation of Student's current abilities. The report specified that the testing and assessment materials and procedures used were selected and administered so as not to be racially, culturally, or sexually discriminatory. The tests were validated for the specific purpose for which they were used and were administered by trained personnel in accordance with the instructions of the test producer.

63. The report described areas relating to school OT, including postural stability (i.e., maintain seated position, assume and maintain various positions required at school, strength and range of movement), fine motor (hand motor skills), visual motor (eye-hand coordination), sensory processing, motor planning/praxis (ability to carry out body movements, follow a motor sequence, negotiate obstacles, etc.), and self-help skills as related to school performance.

64. The report described Student's behavior during testing. Student was assessed over the course of approximately two hours. Part of the assessment occurred on a one-to-one basis in a small office for just over an hour in the presence of Mother. During testing, Student received three short breaks to mold play dough into whales. He was focused and eager to work with Dr. Briceno, even though he was not acquainted with her. At the completion of standardized testing, he transitioned to his classroom and from his classroom into the computer lab with minimal difficulty, but he had some trouble separating from Mother. Dr. Briceno observed Student working in the computer lab in the presence of Ms. McGuire, and briefly observed him working in class before he left to attend his LAS session. Dr. Briceno then interviewed Ms. Overduin and Ms. McGuire, and she reviewed work samples for approximately 20 to 30 minutes with each of these professionals.

65. The report described Student's gross motor skills, range of motion, muscle strength, and postural stability. The report stated that gross motor skills referred to movement and function of the large muscle groups. Student demonstrated adequate functional mobility to navigate safely around the classroom, yard, and computer lab. He presented with functional range of motion and strength for classroom-based participation. Student demonstrated good sitting posture for table-top tasks. He could navigate obstacles in and out of the classroom and followed basic motor sequences, which showed good motor planning/praxis. Student was able to maintain his balance while reaching down to tie his shoes with only stand-by support. The report concluded that foundational gross motor skills were not an area of concern, and referred to the APE assessment report for more details.

66. The report described Student's fine motor/visual motor skills. The report stated that fine motor skills involved precise movements by small muscles in the hands, and visual motor skills referred to the integration of visual information with motor ability. The report noted that Student was right-handed and used a four-finger grasp or a five-finger grasp pattern (with the writing utensil held against the tips of the fingers), with some web space visible. Student used adequate pressure when writing and heavy pressure when coloring. Student could copy vertical and horizontal lines, as well as a circle, square, cross, diagonal

lines, X, triangle, and various abstract shapes and figures. He could legibly write all of the upper and lower case letters of the alphabet, as well as the numerals 0-9. However, when writing letters from memory, he often interchanged between capital and lowercase letters (e.g. wHalE). Student could near-point copy to accurately write letters, words, and sentences. Student had difficulty shifting his gaze between his paper and the printed model when copying from a “far” point model (e.g., a separate piece of paper). Student could write within the lines and other given boundaries, when the lines were not less than one-half inch apart. Student typed using a “hunt and peck” technique to copy a six-word sentence, using upper and lower case letters and appropriate punctuation, with verbal reminders.

67. Student could use his hands in a functional manner to accomplish many everyday tasks. He had mastered various prehension grasps, and he used a neat pincer grasp to pick up small items. He could hold an object using both hands at the same time. He demonstrated the following in-hand manipulation skills: simple rotation, complex rotation, simple translation, complex translation, and palm to finger translation. He could manipulate small pegs, put objects in and out of a container, stack blocks, pick up small flat items, and transfer objects one at a time from palm to fingers and fingers to palm. Student could string beads, lace, complete puzzles, turn knobs to open and close doors, and turn to open and close bottle tops. Student was able to use scissors independently. When cutting shapes and other forms, he had the tendency to cut a gross outline of the shape or form, often cutting off corners and curves of shapes.

68. The report described Student’s results on the Beery-Buktenica Developmental Test of Visual Motor Integration. This test measured the extent to which individuals can integrate their visual and motor abilities. It involved copying geometric drawings onto a form. Student received a raw score of 18 and a standard score of 73 (4th percentile; 6 years, 7 months age equivalent) on this test. The report also included Student’s results on the Beery VMI Developmental Subtests of Visual Perception and Motor Coordination. The Visual Perception subtest is a supplemental test which assessed visual skills by limiting motor responses to simple pointing. It involved matching geometric forms. Student obtained a raw score of 21 (standard score 79; 8th percentile; 7 years, 6 months age equivalent) on this test. The Motor Coordination subtest is another supplemental test, which measured the level of Student’s motor skills. It involved tracing shapes while remaining inside a double-lined path. Student obtained a raw score of 18 and a standard score of 67 (1st percentile; 6 years, 0 months age equivalent) on this test.

69. The report described the BOT-2 as a standardized test that used activities to measure a wide array of motor skills in individuals aged 4 through 21. The report stated that Student attempted and completed three sub-components of the test: the Fine Motor Precision subtest, the Fine Motor Integration subtest, and the Manual Dexterity subtest. The report specified that male norms were used to score this test.

70. The Fine Motor Precision subtest measured the ability to perform precise fine motor tasks by scoring the child’s ability to fold, cut, and draw on paper. Student received a raw score of 22, and an age equivalent score of 5 years 6 months to 5 years, 7 months (Well

Below Average). The Fine Motor Integration subtest measured the ability to coordinate precise hand and visual movements by have the child copy various shapes with a pencil. Student obtained a raw score of 30 and an age equivalent score of 6 years, 9 months to 6 years, 11 months (Below Average). The Manual Dexterity subtest measured hand and finger coordination, and hand speed through the manipulation of various objects. Student obtained a raw score of 18 and an age equivalent score of 6 years, 0 months to 6 years, 2 months (Well Below Average). The report concluded that these scores were comparable to Student's current overall level of functioning.

71. In the area of Self-Help skills, the report noted that Student was independent with his toileting routine, and that Mother reported Student was independent at dressing himself. Student enjoyed picking out his clothes. He had some difficulty with fastening a zipper and buttoning and unbuttoning small buttons. He could independently tie his shoes and feed himself. He could independently go from one place to another on campus.

72. The report described Student's sensory modulation and processing abilities. The report stated that sensory processing provided information about the environment through vestibular, proprioceptive, tactile, visual, and auditory systems. Sensory modulation involved the brain's ability to register, orient, and initially react to these incoming sensory stimuli. The report stated that Student's teacher, Ms. McGuire, completed the SPM. The SPM was an integrated system of rating scales that enabled assessment of sensory processing issues, praxis, and social participation in elementary school-aged children. The report listed Student's scores on the SPM. On the Vision Scale, Student received a T-Score of 70, which placed him in the Definite Dysfunction category. On the Hearing Scale, Student received a T-Score of 69, which placed him in the Some Problems category. On the Touch Scale, Student received a T-Score of 73, which placed him in the Definite Dysfunction category. On the Body Awareness Scale, Student received a T-Score of 57, which placed him in the Typical category. On the Balance and Motion Scale, Student received a T-Score of 58, which placed him in the Typical category. On the Planning and Ideas Scale, Student received a T-Score of 55, which placed him in the Typical category. On the Total Sensory Systems Scale, Student received a T-Score of 67, which placed him in the Some Problems category. (The Total Sensory Systems Scale is a composite score that includes items from the five sensory system scales plus additional items representing taste and smell.)

73. The test identified several sensory areas that presented difficulties for Student. With respect to the Vision Scale, Student frequently looked around, or at peers, rather than looking at the person speaking or the blackboard, and showed distress when the lights were dimmed. He occasionally squinted, covered his eyes, or complained about classroom lighting or bright sunlight, showed distress when seeing moving objects, became distracted by nearby visual stimuli, spun or flicked objects in front of his eye, and stared intensely at people or objects. With respect to the Hearing Scale, Student always showed distress at loud sounds, and he frequently showed distress at musical sounds. He occasionally did not respond to voices or new sounds. He made noises, hummed, sang, or yelled during quiet class time. He also occasionally spoke too loudly or made excessive noise during transitions. With respect to the Touch Scale, Student was always distressed by the accidental touch of

peers, and he frequently showed distress when his hands, face, or clothes were dirty, and when he touched certain textures.

74. The report included information on Student's sensory status that Dr. Briceno obtained from her interview with Ms. Overduin, Student's treating occupational therapist. Ms. Overduin reported that Student often moved away from peers and sought quiet areas in response to increased noise levels in the OT clinic. Student sought deep pressure input through his OT session, he rubbed the point of stimulation when lightly brushed against or touched by peers, he had difficulty sharing small spaces with peers, and his response to wet or sticky materials was inconsistent. Ms. Overduin had not observed Student seek out vestibular/proprioceptive input in the OT room, but he tolerated them when presented by the therapist.

75. The report listed Student's areas of strength as: good foundational gross motor skills, eager to work for praise, solid handwriting skills, good self-help skills, and supportive family. The report listed Student's visual motor and fine motor skills, and sensory processing and sensory modulation abilities as areas of concern. The report concluded that Student had learned many foundational precursors to writing. However, he continued to demonstrate a need for OT services to address significant delays in his fine and visual motor skills as well as to support his sensory processing abilities and difficulties, because they impeded his ability to access his current educational environment. The report recommended that Student continue to receive OT services with an emphasis on sensory integration, as well as remediation of fine and visual motor skills. Dr. Briceno attached to her report three OT goals from Student's IEP of March 12, 2012.

76. Dr. Briceno testified at hearing and elaborated upon her experience and her assessment report. She has assessed approximately 50 to 75 children with autism during her career, and about 75 to 100 children with cognitive delays during her career. She received training in working with children with autism and with cognitive delays through her graduate school program and also through her work at Children's Hospital Los Angeles. During her career, she has worked with approximately 30 children with challenges similar to those of Student.

77. Dr. Briceno spent approximately five hours performing all of the activities associated with her assessment, and she followed the test directions in administering the tests. She did not believe that Mother's presence affected the validity of the tests, but she considered it highly unusual for Mother to be present during assessment. She has given the Beery-Buktenica Developmental Test of Visual Motor Integration approximately 60 to 70 times in the past. She believed that it was an appropriate test, as it provided information regarding how Student integrated his vision with his motor skills. It gave her information regarding his writing and copying abilities. She has administered the Beery VMI Visual Perception and Motor Coordination subtests approximately 75 times previously. She considered it useful for helping her distinguish whether Student's issues were visual-perceptual or fine motor. She had administered the BOT-2 approximately 20 times, and she had administered a previous version of the BOT approximately 20 to 30 times. She

administered this test because it had been administered to Student previously, and it involved every-day school tasks. All of these tests were standardized.

78. She has given the SPM, a standardized assessment, often in the past, when she suspected a child had sensory processing issues. It assisted her in obtaining a general idea of how Student managed his sensory needs in class. Student's sensory profile might not be affecting his education, but she believed it was useful information to know so that one could anticipate some of his responses in the classroom to various stimuli.

#### *APE Assessment*

79. Monica Lizarraga-Papke assessed Student in APE. She received her B.A. from the University of California, Berkeley, and her M.A. from CSULB. She holds a California teaching credential in physical education with an emphasis in APE. She has been employed by the District as an APE teacher for 23 years, and her duties include administering APE assessments to determine eligibility for APE services. Prior to her employment with the District, she worked in a group home for approximately two years as a care provider for children with special needs. The children were between eight and 10 years old, and they were primarily children with global developmental delays and autism. In her work with the District she teaches pre-school through eighth grade, and she has worked with more than 40 children with autism and approximately 200 to 300 children with cognitive deficits during her career.

80. Ms. Lizarraga-Papke performed the assessment on February 11, and February 14, 2013, with additional observations on February 4, and February 6, 2013. She assessed Student at the SLDC. She wrote a report of the assessment. The report described the assessment as part of a triennial multidisciplinary assessment, and that the testing information would be used to make recommendations for placement and programming. The report listed Student's birthdate and age and gave some background information, including that Student had autism with global developmental delays.

81. The report included a behavioral observation. The report stated that Student was a quiet but eager to please sixth-grader, who appeared slightly overweight but showed interest in movement and play. He had a passion for whales and seemed to like the color blue, and one of his preferred activities was playing with small whale figurines. Student enjoyed tossing these figurines or small balls to himself as he walked around. Student was observed to be easily directed with verbal directions by various adults. He demonstrated independence by returning to class and knowing what to do when in class. He was observed during movement exercises that consisted of walking the track and doing some calisthenics. He participated independently, following along as the teacher modeled the exercises, without any additional support. Ms. Lizarraga-Papke also observed Student during an APE session. Her report stated that Student was actively engaged during the whole session. For the most part, he only required verbal directions.

82. The report stated that Ms. Lizarraga-Papke used the following assessment tools: the L.A. Unified Adapted Physical Education Assessment Scale (APEAS-II) (secondary level), and the HUGHES Basic Gross Motor Assessment. Student was assessed individually, and Mother observed some of the testing. The report noted that Student was very compliant during testing. He did all that was asked of him and sometimes seemed very proud of his performance. The assessor permitted him to practice most of the presented tasks, and his performance consistently improved with practice. The assessment was mostly completed in a 60- to 75-minute session and a subsequent 30-minute session, with some additional observations made. The report stated that the assessor gave Student some very short breaks to engage in a preferred activity, and usually Student chose to play with a small ball. The report stated the assessor's belief that the testing information represented a valid and reliable evaluation of Student's present level of performance and ability.

83. The report listed Student's scores on the APEAS-II, and commented that some of Student's scores reflected above-average skills for his age. He was also challenged by some of the tasks, scoring below the 1st percentile. Student was scored on 18 activities, and his scores ranged from the 75th percentile in Kicking accuracy to below the 1st percentile in Throwing Accuracy, Throwing Quality, Running Form, Flexibility, Agility, and Jumping Form.

84. The report also discussed Student's score on the HUGHES. His overall score of 46 suggested a borderline delay in basic motor skills, as the mean score for his age was 53. He met criteria for mature form in the areas of tandem walking (backwards), skipping, balancing on either leg for 10 seconds with arms down, tossing at target, catching, underhand throwing, and alternate dribbling. He came very close to showing mature hopping on left leg and stride jumps. He could hop on his preferred foot up to 10 feet forward, but he often hopped two to four times and then put his non-support foot down. He struggled with hopping more than two times on the right foot. Student had trouble keeping his arms crossed when balancing. After some practice, Student was able to demonstrate the coordination needed to catch the ball into the attached container in four-out-of-six attempts, and his misses were very close. Student also showed good adjustment when attempting to toss beanbags onto a target area. The report referred to the Brigance and the Los Angeles County, Curriculum Assessment, Resources, and Evaluation-Revised standards for age comparisons. The report listed the comparison results, which reflected that Student's skills ranged from 3+ years old in heel-toe walking to 10+ years old in catching. Student could catch a tennis ball from 20 feet with two hands and a one-handed catch was also observed. The report concluded that Student demonstrated relative strength in catching skills and showed some good accuracy in kicking, throwing, and tossing. He was below average, but not significantly below average, in several areas. Student's areas of weakness, in which he showed significant delays, were primarily in general fitness (strength, flexibility, agility, and endurance). Based upon the test scores and observations during the assessment, Ms. Lizarraga-Papke's report recommended the Student have APE, to support Student's participation in a general education program where he could participate in physical education (PE) more regularly with some peers for socialization and for modeling. In a general

education program the report recommended weekly APE support and daily support from staff as needed.

85. Ms. Lizarraga-Papke testified at hearing, and elaborated upon her professional experience and her assessment report. As part of her assessment, she had observed Student at the SLDC's morning movement activity for 10 to 15 minutes, and in APE for 30 minutes. In her opinion, Student did not need a referral for a physical therapy screening, because he could walk, run, skip, balance on one limb, and access the whole school environment.

86. The APEAS-II and the HUGHES were standardized assessments, normed on males and females, and on children of a variety of ethnic backgrounds. They were appropriate, because they involved the appropriate age range and included a variety of activities used in physical education. Ms. Lizarraga-Papke acknowledged that his APEAS scores showed a wide range, but she did not consider that unusual, as children demonstrate a wide range of skills. She had training in and experience in administering the assessments, and she has administered the HUGHES approximately 50 times. She administered the assessments in accordance with the instructions. She considered the assessments valid, because she had discussed the results of the assessments with Student's APE teacher at his school, and they were consistent with the APE teacher's observations.

#### *Mother's Request for IEE's*

87. District provided Mother with draft copies of all of the triennial assessment reports in February or early March 2013. By letter dated March 9, 2013, in advance of any IEP meeting to discuss the assessments, Mother wrote to Elizabeth Vracin, the District's Director of Special Education, requesting IEE's in the areas of psychoeducational, OT, Physical Fitness/Physical Therapy, and LAS. By letter dated March 27, 2013, Ms. Vracin responded to Mother, and refused her request for IEE's. District, and then Mother, each filed due process hearing requests in April 2013, which included the issue of whether Mother was entitled to IEE's. Mother withdrew her due process hearing request by the end of April, after which District withdrew its hearing request. Subsequently, by letter to District dated June 12, 2013, Mother requested, among other things, IEE's in the areas at issue in this hearing. By letter dated June 24, 2013, District denied Mother's request for IEE's, and then filed the Complaint in this matter.

#### *April 16, 2013, IEP Meeting*

88. On April 16, 2013, District convened an IEP meeting, at which all of the assessment reports were presented. The IEP team included Mother, Ms. Foster (the school psychologist), Ms. Butacan (District special education teacher), Ms. Nesbit (District SLP), Mr. Overduin (Student's occupational therapist at SLDC), Ms. Lizarraga-Papke (District APE specialist); Dr. Briceno (District occupational therapist), Ms. Vracin (District's Director of Special Education), Ms. McGuire (student's classroom teacher at SLDC), Ms. Lucy (Student's SLP at SLDC), an APE teacher from SLDC, and a Westside Regional Center representative.

89. Mother asked no questions regarding any of the assessment reports at the April 16, 2013, IEP meeting. None of the SLDC personnel at the meeting questioned or raised any concerns regarding the accuracy or appropriateness of the assessments.

## LEGAL CONCLUSIONS

### *Burden of Proof*

1. The petitioner in a special education due process hearing has the burden of proving his or her contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-57 [126 S. Ct. 528].) As the petitioning party, District has the burden of proof in this case.

### *Issues 1-5: Whether District's Assessments Were Appropriate*

2. District contends that its triennial assessments in the areas of psychoeducational, academic, LAS, OT, and APE were appropriate, and that Student is not entitled to IEE's in these areas, at public expense.

### *Assessments*

3. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the student'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 whether the student's educational program is appropriate. (20 U.S.C. § 1414 (a)(2),(3); Ed. Code, § 56320, subds.(e) & (f).) The assessment must be sufficiently comprehensive to identify all of the child's special education and related services needs, regardless of whether they are commonly linked to the child's disability category. (34 C.F.R. § 300.306.)<sup>2</sup> The disability categories under which a child may be found eligible for special education and related services include autistic-like behaviors and intellectual disability. (Cal. Code Regs., tit. 5, § 3030, subds. (g) and (h).

4. An assessment of a student who is receiving special education and related services must occur at least once every three years unless the parent and the school district agree that such a reevaluation is unnecessary. (20 U.S.C. § 1414(a)(2); Ed. Code, § 56381, subd. (a)(2).) The same basic requirements as for an initial assessment apply to re-assessments such as the three-year (triennial) assessment. (20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303; Ed. Code, § 56381, subd. (e).)

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<sup>2</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise specified.



5. The school district must provide notice to the parents of a child with a disability, in accordance with 34 Code of Federal Regulations part 300.503, that describes any evaluation procedure the agency proposes to conduct. (34 C.F.R. § 300.304.) The district must obtain informed parental consent prior to conducting an assessment or reassessment of a child with a disability. (34 C.F.R. § 300.300.) Parental consent pursuant to the IDEA requires that the parent has been fully informed of all information relevant to the evaluation, and the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom. (34 C.F.R. § 300.9.)

6. As part of a reevaluation, the IEP team and other qualified professionals must review existing evaluation data on the child, including teacher and related service-providers' observations. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. §300.305; Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the school district must identify any additional information that is needed by the IEP team to determine the present level of academic achievement and related developmental needs of the student, and to decide whether modifications or additions to the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The school district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).)

7. Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code, § 56320, subds. (a), (b).) 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), and 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) A health assessment shall be conducted by a credentialed school nurse or physician who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56325, subd. (b).) 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 primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2),(3); Ed. Code, § 56320, subds. (a), (b).)

8. In conducting the assessment, the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, which may assist in determining whether the student is a child with a disability, and the content of the IEP. (20 U.S.C. § 1414(b)(2)(A)(i).) The school district must use technically sound instruments to assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. (20 U.S.C. § 1414(b)(2)(C).)

9. Assessments must be selected and administered to best ensure that the test results accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure and not the pupil's impaired sensory, manual, or speaking skills unless those skills are the factors the test purports to measure. (Ed. Code, § 56320, subd. (d); 34 C.F.R. § 300.304(c)(3).) The assessor must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development and medical findings, if any; (6) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage; and (7) the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting required after the assessment. (20 U.S.C. § 1414(b)(4)(B); Ed. Code, § 56329, subd. (a)(3).)

10. The procedural safeguards of the IDEA provide that under certain conditions a parent is entitled to obtain an IEE of a child at public expense. (20 U.S.C. §1415(b)(1).) An IEE is an evaluation conducted by a qualified examiner not employed by the school district. (34 C.F.R. § 300.502(a)(3)(i).) A parent has the right to request an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329, subd. (b).) When a parent requests an IEE at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense, unless the school demonstrates at a due process hearing that an IEE already obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(4); Ed. Code, § 56329, subd. (c).)

### *Analysis*

11. District's psychoeducational assessment met all legal requirements for assessments. Ms. Foster was qualified to conduct the assessment. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and she administered them in accordance with the test instructions. She used assessment instruments that were valid and reliable, as is demonstrated, in part, by the facts that Student's teachers and service providers at the SLDC had no criticisms of Ms. Foster's report, and that the IEP team did not question Student's eligibility as a student with autism. She used a variety of assessment measures, both standardized and non-standardized. She reviewed existing evaluation data. She assessed Student in all areas of suspected disability within the psychoeducational assessment realm. She prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's strengths and weaknesses, and discussed Student's need for special education and related services. District provided Mother with a copy of the report prior to the April 16, 2013 IEP meeting at which Ms. Foster presented her report.

12. District's academic assessment also met all legal requirements for assessments. Ms. Butacan was qualified to conduct the assessment. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be

discriminatory, and she administered them in accordance with the test instructions. She used assessment instruments that were valid and reliable, as is demonstrated, in part, by the fact that the results of the assessment were consistent with Student's teacher's observations, and Student's teacher and service providers at the SLDC had no criticisms of Ms. Butacan's report. She used a variety of assessment measures, including standardized and non-standardized tests, teacher interview, and observations of Student. She assessed Student in all areas of suspected disability within the academic assessment realm. She reviewed existing evaluation data. She prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's strengths and weaknesses, and discussed whether Student required special education and related services. District provided a copy of the report to Mother prior to the April 16, 2013, IEP meeting at which Ms. Butacan presented the report.

13. District's LAS assessment met all legal requirements for assessments. Ms. Nesbit was qualified to conduct the assessment. Her assessment instruments were appropriate to administer to Student, they were selected so as not to be discriminatory, and she administered them in accordance with the test instructions. She used assessment instruments that were valid and reliable, as is demonstrated, in part, by the facts that Student's teachers and service providers at the SLDC had no criticisms of Ms. Nesbit's report, and her assessment results were consistent with her observations and those of his teacher. She used both informal and formal assessment measures, and she assessed Student in all areas of suspected disability within the LAS assessment realm. She reviewed existing evaluation data. She prepared a thorough and appropriate report of the assessment, which explained the assessment results described Student's strengths and weaknesses, and discussed Student's need for special education and related services. District provided a copy of the report to Mother prior to the April 16, 2013, IEP meeting at which Ms. Nesbit presented the report.

14. District's OT assessment met all legal requirements for assessments. Dr. Briceno was qualified to conduct the assessment. The assessment instruments were valid and reliable, as is demonstrated, in part, by the facts that Student's teachers and service providers at the SLDC had no criticisms of Dr. Briceno's report, and the test results were consistent with her observations. The assessment instruments she used were appropriate to administer to Student, they were selected so as not to be discriminatory, and she administered them in accordance with the instructions. Dr. Briceno used multiple assessment measures, including standardized tests, observations in several settings, records review, and interviews of Student's then-current teacher and occupational therapist. She reviewed existing evaluation data. She assessed Student in all areas of suspected disability within the OT assessment realm. She prepared a thorough and appropriate report of the assessment, which explained her results, described Student's strengths and weaknesses, and discussed Student's need for special education and related services. District provided Mother with a copy of the report prior to the April 16, 2013, IEP meeting at which Dr. Briceno presented her report.

15. District's APE assessment met all legal requirements for assessments. Ms. Lizarraga-Papke was qualified to conduct the assessment. She used assessment instruments

that were appropriate to administer to Student, and were selected so as not to be discriminatory. She administered the assessments in accordance with the test instructions. She used assessment instruments that were valid and reliable, as is demonstrated, in part, by the fact that Student's teachers and service providers at the SLDC had no criticisms of her report. Furthermore, her assessment results were consistent with the observations of Student's APE teacher at the SLDC. Ms. Lizarraga-Papke used multiple measures, including standardized assessments and observations of Student in multiple settings, and she assessed Student in all areas of suspected disability within the realm of APE assessments. She prepared a thorough and appropriate report of the assessment, which explained the assessment results, described Student's strengths and weaknesses, and discussed Student's need for special education and related services. District provided Mother with a copy of the report prior to the April 16, 2013, IEP meeting at which Ms. Lizarraga-Papke presented the report.

16. Overall, based upon Findings of Fact 1-89 and Legal Conclusions 1-15, the evidence demonstrated that District's assessments of Student in the areas of psychoeducational, academics, LAS, OT, and APE were properly conducted, such that Student is not entitled to IEE's at public expense in these areas.

#### ORDER

1. District's triennial assessments in the areas of psychoeducational, academic, LAS, OT, and APE were appropriate.
2. District is not obligated to fund IEE's in the areas of psychoeducational, academic, LAS, OT, or APE as requested by Student.

#### 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 each issue heard and decided in this matter.

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 ninety (90) days of receipt.

Dated: October 31, 2013

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ELSA H. JONES  
Administrative Law Judge  
Office of Administrative Hearings