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

In the Matter of: STUDENT, Petitioner, vs. MURRIETA VALLEY UNIFIED SCHOOL DISTRICT, Respondent.	OAH NO. N2006010061

DECISION

Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter in Murrieta, California, on May 15-19, 2006.

Ellen Dowd, Attorney at Law, represented the Student. Student was not present during the hearing. Student's Mother was present during the hearing.

Maria E. Gless and Dina Harris, Attorneys at Law, represented the Murrieta Valley Unified School District (District). Zhanna Preston, District's Special Education Director, was present during the hearing. Jack Clarke, Attorney at Law, was present on May 15, 2006.

The record remained open to receive written briefs by 5:00 p.m. on May 31, 2006. OAH received Petitioner's written brief on May 31, 2006, and the District's brief on June 1, 2006.[1] The record closed on May 31, 2006, and the District's written brief was not considered for being untimely.

[1] While the District's Proof of Service indicated that the District faxed and mailed its closing brief on May 31, 2006, OAH did not receive the District's fax until 8:27 a.m. on June 1, 2006. The District provided no explanation as to the lateness of its written brief.

ISSUES

1. Whether the District's May 20, 2005 psychoeducational profile assessment is inadequate because the District failed to appropriately assess Student in all areas of suspected disabilities, specifically visual and auditory processing and speech and language.

2. Whether, during the 2004-2005 school year Student was eligible for special education services under the designation of Specific Learning Disability (SLD).

3. Whether Student is entitled to reimbursement for Independent Educational Evaluations (IEE): A) The psychoeducational evaluation conducted by Dr. Jeffrey Owen; B) The visual processing evaluation conducted by the San Diego Center for Vision Care; and C) The Central Auditory Processing Disorder evaluation from Maureen Wiskerchen, M.A.

4. Whether, during the 2005-2006 school year Student was eligible for special education services under the designation of SLD, and whether the District failed to properly consider:

   A. Information presented by Dr. Owen as to Student's auditory and visual processing disorder.

   B. Information from Student's second grade teacher as to Student's abilities and need for additional educational assistance.

   C. The auditory and visual processing IEEs Petitioner presented to the District.

5. Whether, during the 2005-2006 school year, the District failed to reassess Student for special education services under the designation of SLD, based upon Student's failure to make sufficient progress in the areas of written conventions and spelling, and Student's ongoing auditory and visual processing problems.

FACTUAL FINDINGS

Preliminary Findings

1. Student was born August 22, 1996 and lived with her parents within the District. Student entered the District at the start of the 2002-2003 school year and attended through March 31, 2006. Mother enrolled Student in the Temecula Valley Unified School District (TVUSD) on April 14, 2006. Student has not previously been found eligible for special education services.

District's Psychoeducational Profile Assessment

2. The observations of Kristen Richardson, Student's second grade teacher, during the school year, gave rise to possible visual and auditory processing deficits involving Student. Ms. Richardson observed that Student needed to be closer to the chalkboard. Student could not read at her desk or follow what was projected on the overhead, prompting Ms. Richardson to provide Student with individual instruction to go over directions. Ms. Richardson observed Student reversing letters and words in written work.

3. In the psychoeducational assessment, Linda Lucas, a District school psychologist, conducted the Test of Auditory Perceptual Skills, Revised (TAPS-R). Student obtained an Auditory Quotient of 91, which placed Student in the 27th percentile. Student's score was not so deficient to require further testing, and Student's low score in the Auditory Sentence Memory subtest did not establish that Student had an auditory processing disorder or required further testing.[2] While Ms. Lucas did not correctly score the median age for TAPS-R, which should have been 7-10 and not 8-6, this error did not invalidate Ms. Lucas' finding in her assessment that Student did not have an auditory processing disorder. Corroborating Ms. Lucas' finding that Student did not have an auditory processing disorder is Petitioner's own auditory assessment which, found that Student only had "minor issues of auditory maturation and hemispheric specialization." After Ms. Lucas conducted her psychoeducational profile assessment, the District had no indication that Student required further assessment in the area of auditory processing.

4. Petitioner did not introduce at hearing any evidence that the District's speech and language assessment, conducted by Jennifer Clanton, M.A., was inadequate.

5. Concerning visual processing, Ms. Lucas conducted the Beery Test of Visual Motor Integration - Fifth Edition (VMI). Student's scaled score of 115, which placed Student in the 84th percentile, indicated that Student did not have a visual motion integration processing disorder. However, Ms. Lucas' results were flawed as she misread three responses. Both the District's expert, Dr. Kenneth Wesson, and Student's expert, Dr. Jeffrey S. Owen, agreed that Ms. Lucas incorrectly scored two drawings on the VMI, numbers 20 and 22, but they disagreed whether Ms. Lucas scored correctly number 21. While both experts are extremely qualified to administer and interpret the VMI results, Dr. Owen was more credible in his determination that Ms. Lucas incorrectly scored number 21 based on his explanation of the testing protocol and why Ms. Lucas' score was incorrect. With the correction, Student's scaled score is 88, which placed Student in the 19th percentile. By itself, this low score does not mean that Student had a visual motor processing disorder. However, coupled with Student's academic struggles noted by Ms. Richardson and District's concern that Student may have dyslexia, the corrected score indicated the need to conduct further assessments to rule out a visual processing disorder.

[2] Student received scaled score of 6 in this subtest, which placed Student in the 9th percentile.

6. Parents obtained an IEE from Dr. Owen, whose psychoeducational assessment found that Student did have a visual motor processing disorder. As part of the assessment Dr. Owen conducted both the Laterality Checklist and the Jordan Left-Right Reversal Test – Third Revised Edition. On both tests, Student scored in the first percentile, indicating that Student had not established clear left or right brain dominance. Dr. Owen established that this failure can cause great difficulty in reading and writing. Dr. Owen explained that due to Student's high average Intelligence Quotient (IQ), Student could obtain higher scores in the Gray Oral Reading Tests (GORT) and the Test of Written Language – Third Edition (TOWL) by compensating for her visual motor processing disorders. The District, through Dr. Wesson, established problems with Dr. Owen's administration of the GORT and the TOWL tests. However, Dr. Owen's determination that Student had a visual motor processing disorder that impacted Student's reading and written expression is supported by the results of all tests he conducted and Dr. Owen's expertise in the area of neuropsychology.

7. Parents obtained a visual processing evaluation from the San Diego Center for Vision Care. This evaluation did not find that Student had a visual motor processing disorder, but that Student needed better glasses and therapy to improve Student's eye muscles and eye tracking. Concerning the auditory assessment from Maureen Wiskerchen, M.A., this evaluation only found that Student had minor auditory processing problems, and supported Ms. Lucas' finding that Student did not have an auditory processing disorder.

8. Ms. Lucas obtained detailed information as to Student's problems in the classroom by speaking with Ms. Richardson and Student's parents, and by reviewing Student's school records. Ms. Lucas properly evaluated Student's academic progress and deficits in reading, written expression and spelling, and considered all relevant information related to Student's progress in the regular education curriculum. The District assessed Student in all areas of suspected disabilities, which were identified as visual and auditory processing in Ms. Lucas' report, and speech and language in the assessment

9. On June 10, 2005, the last day of school before the District's summer vacation, Mother wrote the District to disagree with the findings in Ms. Lucas' psychoeducational report. Mother disagreed with Ms. Lucas' finding that Student did not have a processing disorder, and made a request for IEEs. The District replied to Mother's IEE request on July 21, 2006, by offering to meet with Parents to draw up an assessment plan concerning phonological processing by conducting the Comprehensive Test of Phonological Processing, and to look further into emotional areas that might be impacting Student. Parents did not agree to the District's assessment offer, and instead sought IEEs from Dr. Owen, the San Diego Center for Vision Care, and Ms. Wiskerchen, discussed below.

May 20, 2005 And June 9, 2005 Individualized Education Program Meetings

10. District representatives and Parents met on May 20, 2005 to discuss whether Student was eligible for special education services under the designation of SLD. Ms. Lucas in her psychoeducational assessment determined that a significant discrepancy existed between Student's ability level and Student's achievement in the areas of basic reading and

basic written expression.[3] The District determined that Student was not eligible for special education services based on SLD because Ms. Lucas determined in her psychoeducational assessment that Student did not have a either a visual or auditory processing disorder.

11. At the time of the May 20, 2005 Individualized Education Program (IEP) meeting, Ms. Richardson provided Student with accommodations and modifications to the regular education program, which allowed Student to make sufficient progress in the regular education curriculum. Beside the accommodations and modifications mentioned previously, Ms. Richardson gave Student additional time to complete assignments and provided Student additional individual instruction during class.[4] While the District inaccurately determined that Student did not have a visual processing disorder, Ms. Richardson established that at the time of the May 20, 2005 IEP meeting that even in Student's lowest areas of academic achievement, which were reading fluency and spelling, the accommodations and modifications to the regular education instruction that she provided ameliorated Student's academic discrepancies.

12. The fact that at the end of the second trimester Student received marks of "2" in nearly every education subject, and not marks of "3," is not sufficient to warrant a finding that Student was not progressing adequately in the regular education curriculum. A mark of "2" is not "failing," as "2" is defined as a "student is beginning to, and occasionally does, meet the end of year standards for second grade." Most students receive marks of "2" at the end of the second trimester as students are still progressing to meet grade level proficiency, which is a mark of "3." Student also received for "Overall Growth and Effort Letter Grades" marks of 'Satisfactory +' in "Reading" and "Satisfactory" in "Writing," which meant that Student was making sufficient progress in the regular education curriculum. Student's mark of "1" for "fluency" and "2-" for "spelling," by themselves, do not establish that Student was not making adequate academic progress as the totality of Student's achievement in reading and writing must be evaluated, not just two marks.

13. The IEP team met again on June 9, 2005, to discuss revisions to Ms. Lucas' report that the IEP team requested at the prior IEP meeting, and to answer any additional questions Parents had. Ms. Lucas revised her report to delete the reference that Student had a severe discrepancy between Student's Verbal and Performance IQs and the following paragraph that explained the discrepancy, which the software program erroneously inserted. Ms. Lucas also corrected the reason for the referral and included additional information at Parents' request in the report's medical history, home and community, and educational history sections. After discussing Ms. Lucas' report, Student's academic progress and reviewing the additional information Parents provided, the District continued to determine that Student was not eligible for special education under the SLD designation.

---

[3] Due to a software flaw in the computer program that Ms. Lucas used to assist her in drafting her psychoeducational assessment, her initial report for the May 20, 2005 IEP meeting mistakenly stated that a "significant discrepancy exists between [Student's] Verbal and Performance IQs in favor of the Verbal IQ." A significant discrepancy did not exist as Student's Verbal IQ on the Wechsler Intelligence Scale for Children – Third Edition, was 124, and Student's Performance IQ was 108, for a difference of 18 points. For a severe discrepancy to exist, a difference of greater than 22.5 points would be needed. (5 C.C.R. § 3030(j)(4)(A).)

[4] While Ms. Richardson also provided Student with assistance outside of school hours, due to her friendship with Parents, this additional help was not required to ameliorate Student's academic discrepancy.

14. At the June 9, 2005 IEP meeting, the IEP team discussed in depth Student's progress in Ms. Richardson's class, and that Student was performing at grade level, with spelling continuing to be a concern. Ms. Richardson continued to provide Student with modifications and accommodations to the regular education curriculum. The best evidence as to Student's educational progress and whether the accommodations ameliorated the discrepancies is Ms. Richardson. Ms. Richardson observed Student every day, and due to her friendship with Parents, is the least biased District representative. Although Student continued to have difficulty in the areas of reading decoding and fluency, writing organization and applications, and spelling at the end of the second grade, Student's discrepancies were sufficiently ameliorated through the regular education accommodations and modifications provided by Ms. Richardson.

15. The District used the correct analysis in determining whether Student was eligible for special education services under the SLD designation in these two IEP meetings. The District first analyzed whether a severe discrepancy existed between Student's intellectual ability and achievement. The District then examined whether Student had a disorder in one or more of basic psychological processes involved in understanding or using spoken or written language. Although not discussed in detail at the May 20, 2005 IEP meeting, the IEP team, including Parents, did discuss in depth at the June 9, 2005 IEP meeting, whether Student's discrepancy could be ameliorated in the regular education environment, and analyzed how Student was progressing in Ms. Richardson's class.

September 30, 2005 IEP Meeting

16. The IEP team met on September 30, 2005, a little more than a month into Student's third grade, to discuss further whether Student was eligible for special education services. During the summer, Parents obtained a psychoeducational IEE from Dr. Owen, a Central Auditory Processing Disorder IEE from Maureen Wiskerchen, M.A., and a visual information processing IEE from the San Diego Center for Vision Care. Parents presented these IEEs to the District before the IEP meeting, which the District reviewed before and during the IEP meeting. Dr. Owen was present at the IEP meeting to present his findings, along with Dr. Wilkelstein, by phone, who had reviewed the visual information processing evaluation. The IEP team reaffirmed the prior finding that Student had a severe discrepancy between intellectual ability and achievement in the academic areas of basic reading and basic written expression. Based on the new information, the IEP team found that Student had a visual perception motor integration disorder, but did not find that Student had an auditory processing disorder.[5] The IEP team found that Student's visual processing disorder manifested itself in Student's writing and spelling.

[5] District psychologists, Ms. Lucas and Kari Gonzales, attended the IEP meeting and did not raise any significant objections to Dr. Owen's report and its findings.

17. The IEP team reviewed Student's academic progress presented by Ms. Richardson and Virginia Rogers, Student's third grade teacher, and reviewing Student's school work and marks in these classes. The IEP team also reviewed the results of Student's California Standardized Testing and Reporting (STAR) examination and performance on the District's end of second grade assessment.

18. Student received on the end of second grade report card marks of "2" in two out of five reading areas and three out of six writing standards. The mark of "2" meant that Student was meeting, at times, the grade level expectations when she left second grade, and not failing as Petitioner contends. Petitioner presented no persuasive evidence that because Student's IQ placed in her in the top third of her class that her grades should be in the top third. Student's end of year marks are not sufficient to warrant a finding that Student was not progressing adequately in the regular education curriculum, and that Student's academic discrepancy could not be ameliorated in the regular education environment.

19. Student took the STAR exam in the spring of 2005 and the District received the results in August 2005. The STAR results showed that Student scored in the high proficient level in language arts, and was only below the proficient level in one area, writing conventions, which corresponds to the area of Student's processing disorder noted by Dr. Owen. However, the writing conventions score fell within the basic area, and was just a few points below proficient. In the areas of language arts and writing, Student received grade level or above scores at the end of second grade tests that the District conducted. Although the STAR and District testing may be multiple choice, Student's scores in these areas is not diminished as Student still must read and understand the questions, which involve visual processing, and to determine the correct answer. Also, Student received no special modifications in taking these tests.

20. Before the start of third grade, Mother spoke to Student's new teacher, Ms. Rogers, about Student and the accommodations and modifications that Ms. Richardson provided. Ms. Rogers provided Student extra teaching support and small group instruction in decoding and fluency. Ms. Rogers had Student sit in front of the class and gave Student additional time to complete assignments and tests.

21. At the time of the IEP meeting, Student was progressing adequately in Ms. Rogers' class, despite the fact that she missed approximately two weeks of school due to a tonsillectomy. Ms. Rogers incorporated the accommodations and modifications that Ms. Richardson had provided, except for the out of class assistance. The test scores and work product that the IEP team reviewed from Ms. Roger's third grade class show that Student's academic discrepancies were ameliorated in the regular education environment. Student's start of the school year scores in reading fluency and on the reading theme skills, which measures spelling, writing skills, writing fluency and decoding, were slightly below the norm, which is not sufficient to qualify Student for SLD. Student was able to perform well on these tests, and was making adequate academic progress in reading and writing, with the modifications and accommodations made by Ms. Rogers. Petitioner presented no credible evidence that Student should automatically be at grade level a month into the school year based on Student's IQ.

Student's Academic Progress During the 2005-2006 School Year

22. Ms. Rogers established that Student, with the assistance of the regular education accommodations and modifications she provided, was progressing adequately in the regular education curriculum at the end of the second trimester. Student continued to receive marks of "2" in the second trimester and only went down in writing mechanics from a mark of "2" to "2-". Student improved in fluency, an area of concern due to Student's visual processing disorder, from "2-" to "2," while Student's spelling was still at "2-." The District established during the middle of a school year it is not unexpected for a student to be at a "2" level as a "3" level, which means that the student reached grade sufficiency measured by the end of the year expectation. Student's marks in spelling and writing mechanics are not sufficient to establish that Student's academic discrepancies were not ameliorated in the regular instructional program through modifications and accommodations, and additional services to Student.

23. The scores that Ms. Rogers presented as to Student's reading fluency and the reading theme skills tests indicate that Student was adequately progressing and accessing the regular education curriculum. The fact that Student was having self-esteem issues as Student was not performing as well as Student, or Parents, wanted is not sufficient to qualify Student for special education services under the SLD designation.

24. Student continued to have letter and word reversals in third grade. Ms. Rogers and Dr. Wesson established that it is not unusual for a third grade student to have letter and word reversals, and that they would have greater concern if Student had her level of reversals in fourth grade.

25. Due to Student's problems in reading fluency and decoding, the District offered Student a reading intervention program, four days per week for 45 minutes per session, which Parents accepted. Starting in November 2005, Jennifer Ekenstam, a District resource specialist, provided this reading intervention. Student attended this program normally three times a week due to a conflict with the vision therapy that Parents obtained. Ms. Ekenstam provided this reading intervention for second and third grade general education student who were slightly below grade level reading level. Ms. Ekenstam provided the reading intervention program in her resource classroom, and not the student's regular class. The fact that Student participated in this reading program, which was not in the regular education classroom, does not establish that Student was not progressing adequately in the regular education curriculum and that the District needed to reassess Student.

26. Parents requested on March 14, 2006 that the District convene an IEP meeting, based on their belief that Student was not progressing adequately in the regular education curriculum, even with the additional support that the District was providing Student. The District did offer to meet with Parents to discuss Student's academic progress, but not as an IEP meeting. No meeting was held as the District started its two-week spring break on April 3, 2006, and Mother enrolled Student in a TVUSD school on April 14, 2006.

LEGAL CONCLUSIONS

Applicable Law

1. Student has the burden of proof as to the issues designated in the Issues of this Decision. (*Schaffer v. Weast* (2005) 546 U.S. ___ [163 L.Ed.2d 387].)

2. Under both State law and the federal Individuals with Disabilities Education Act (IDEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. §§ 1400, et seq.[6]; Ed. Code §§ 56000, et seq.[7]) The term "free appropriate public education" means special education and related services that are available to the student at no cost to the parents, that meet the State educational standards, and that conform to the student's individualized education program (IEP). (§ 1401(9).) "Special education" is defined as specially designed instruction, at no cost to parents, to meet the unique needs of the student. (§ 1401(29).)

3. California law defines special education as instruction designed to meet the unique needs of individuals with exceptional needs coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code § 56031.) The term "related services" includes transportation and other developmental, corrective, and supportive services as may be required to assist a child to benefit from special education. (§ 1401(26).)

4. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)[8] It must be evaluated in terms of what was objectively reasonable when the IEP was developed. (*Ibid.*) The focus is on the placement offered by the school district, not on the alternative preferred by the parents. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987), 811 F.2d 1307, 1314.)

5. The Supreme Court in *Rowley, supra*, also recognized the importance of adherence to the procedural requirements of the IDEA. However, procedural flaws do not automatically require a finding of a denial of a FAPE. Procedural violations may constitute a denial of FAPE only if the procedural inadequacies impede the child's right to a FAPE, cause a deprivation of educational benefits, or significantly impede the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); *see, W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.)

---

[6] All federal statutory citations are to Title 20 United States Code, unless otherwise noted.

[7] All statutory citations to the Education Code are to California law, unless otherwise noted.

[8] Although *Adams* involved an Individual Family Service Plan and not an IEP, the Ninth Circuit Court of Appeals applied the analysis in *Adams* to other issues concerning an IEP (*Christopher S. v. Stanislaus County Off. of Education* (9th Cir. 2004) 384 F.3d 1205, 1212), and District Courts within the Ninth Circuit have adopted its analysis of this issue for an IEP (*Pitchford v. Salem-Keizer School Dist. No. 24J* (D. Or. 2001) 155 F. Supp. 2d 1213, 1236).

6. Pursuant to Title 34 Code of Federal Regulations part 300.502 and Education Code section 56329, subdivision (b), a parent has the right to obtain an independent educational assessment of the pupil from a qualified specialist, at public expense, if the parent disagrees with the assessment obtained by a district, unless a district shows at a due process hearing that its assessment is appropriate. For an assessment to be deemed appropriate, it must comply with Section 1414, subdivisions (b)(2) and (3), and Education Code sections 56320, 56322, and 56324.

7. "If a parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free, appropriate public education to the child and may be presented as evidence at a due process hearing . . . regarding the child." (Ed. Code § 56329(c).)

8. At the time of the May and June 2005 IEP meetings, the law governing SLD, Education Code section 56337, provided that the following three requirements must be met in order to satisfy eligibility criteria for a specific learning disability: (a) A severe discrepancy exists between the intellectual ability and achievement in one or more of the following academic areas: (1) Oral expression; (2) Listening comprehension; (3) Written expression; (4) Basic reading skills; (5) Reading comprehension; (6) Mathematics calculation; (7) Mathematics reasoning; (b) The discrepancy is due to a disorder in one or more of the basic psychological processes and is not the result of environmental, cultural, or economic disadvantages; (c) The discrepancy cannot be corrected through other regular or categorical services offered within the regular instructional program.

9. Effective July 1, 2005, Section 1414(b)(6) was amended to read:

> (A) In general. Notwithstanding section 607(b) [20 U.S.C. § 1406(b)], when determining whether a child has a specific learning disability as defined in section 602 [20 U.S.C. § 1401], a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.
>
> (B) Additional authority. In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

Effective October 7, 2005, Education Code section 56337 was amended to comport to the changes in Section 1414(b)(6).

10. California Code of Regulations, Title 5, section, subsection 3030, subdivision (j), sets forth the eligibility criterion for students with a specific learning disability.

A pupil has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an impaired ability to listen, think, speak, read, write, spell, or do mathematical calculations, and has a severe discrepancy between intellectual ability and achievement in one or more of the academic areas specified in Section 56337(a) of the Education Code. For the purpose of Section 3030(j):

(1) Basic psychological processes include attention, visual processing, auditory processing, sensory-motor skills, cognitive abilities including association, conceptualization and expression;

(2) Intellectual ability includes both acquired learning and learning potential and shall be determined by a systematic assessment of intellectual functioning;

(3) The level of achievement includes the pupil's level of competence in materials and subject matter explicitly taught in school and shall be measured by standardized achievement tests;

(4) The decision as to whether or not a severe discrepancy exists shall be made by the individualized education program team, including assessment personnel in accordance with Section 56341(d), which takes into account all relevant material which is available on the pupil. No single score or product of scores, test or procedure shall be used as the sole criterion for the decisions of the individualized education program team as to the pupil's eligibility for special education. In determining the existence of a severe discrepancy, the individualized education program team shall use the following procedures:

(A) When standardized tests are considered to be valid for a specific pupil, a severe discrepancy is demonstrated by: first, converting into common standard scores, using a mean of 100 and standard deviation of 15, the achievement test score and the ability test score to be compared; second, computing the difference between these common standard scores; and third, comparing this computed difference to the standard criterion which is the product of 1.5 multiplied by the standard deviation of the distribution of computed differences of students taking these achievement and ability tests. A computed difference which equals or exceeds this standard criterion, adjusted by one standard error of measurement, the adjustment not to exceed 4 common standard score points, indicates a severe discrepancy when such discrepancy is corroborated by other assessment data which may include other tests, scales, instruments, observations and work samples, as appropriate;

(B) When standardized tests are considered to be invalid for a specific pupil, the discrepancy shall be measured by alternative means as specified on the assessment plan;

(C) If the standardized tests do not reveal a severe discrepancy as defined in subparagraphs (A) or (B) above, the individualized education program team may find that a severe discrepancy does exist, provided that the team documents in a written report that the severe discrepancy between ability and achievement exists as a result of a disorder in one or more of the basic psychological processes. The report shall include a statement of the area, the degree, and the basis and method used in determining the discrepancy. The report shall contain information considered by the team which shall include, but not be limited to:

1. Data obtained from standardized assessment instruments;
2. Information provided by the parent;
3. Information provided by the pupil's present teacher;
4. Evidence of the pupil's performance in the regular and/or special education classroom obtained from observations, work samples, and group test scores;
5. Consideration of the pupil's age, particularly for young children; and
6. Any additional relevant information.

(5) The discrepancy shall not be primarily the result of limited school experience or poor school attendance.

Determination of Issues

Issue One: Whether the District's May 20, 2005 psychoeducational profile assessment is inadequate because the District failed to appropriately assess Student in all areas of suspected disabilities, specifically visual and auditory processing and speech and language.

A. Pursuant to Factual Finding 3, Ms. Lucas correctly determined that Student did not have an auditory processing disorder as Petitioner's auditory assessment did not indicate that Student had an auditory processing disorder based on the results of the TAPS-R. Pursuant to Factual Finding 4, District conducted an adequate speech and language assessment.

B. Pursuant to Factual Findings 5 through 7, Ms. Lucas' assessment failed to properly determine that Student had a visual processing disorder. Dr. Owen's psychoeducational assessment and testimony established that Ms. Lucas assessment incorrectly determined that Student did not have a visual processing disorder that impacted Student's basic reading and basic written expression.

C. Pursuant to Factual Finding 8, the District complied with Education Code section 56320 by assessing Student in all areas of suspected disability. District assessed Student in the areas of suspected disability by conducting a speech and language, auditory and visual processing assessments. Ms. Lucas' psychoeducational profile adequately assessed Student in the general education.

Issue Two: Whether, during the 2004-2005 school year Student was eligible for special education services under the designation of Specific Learning Disability (SLD).

A. Pursuant to Factual Findings 10 through 15, The IEP team adequately discussed at the June 9, 2005 IEP meeting Student's academic progress, and the District properly determine that Student was not eligible for special education services pursuant to a designation of SLD as pursuant to Education Code section 56337, subdivision (c), Student's academic discrepancies were ameliorated by the assistance and modifications provided by Ms. Richardson. Ms. Richardson's testimony and Student's report card established that Student made adequate academic progress.

B. Pursuant to Factual Findings 10 through 15, the District used the proper three prong analysis required by Education Code section 56337 in analyzing whether Student was eligible for special education under designation of SLD. The District analyzed whether a severe discrepancy existed between Student's intellectual ability and achievement, and then whether Student had a disorder in one or more of basic psychological processes involved in understanding or using spoken or written language. Finally, the District evaluated whether Student's discrepancy could be ameliorated in the regular education environment.

Issue Three: Whether Student is entitled to reimbursement for Independent Educational Evaluations (IEE): A) The psychoeducational evaluation conducted by Dr. Jeffrey Owen; B) The visual processing evaluation conducted by the San Diego Center for Vision Care; and C) The Central Auditory Processing Disorder evaluation from Maureen Wiskerchen, M.A.

A. Pursuant to Factual Findings 5 and 6, Petitioner is entitled for reimbursement for Dr. Owen's IEE as Ms. Lucas did not properly determine that Student had a visual processing disorder, which Dr. Owen appropriately determined. (Ed. Code § 56329(b).)

B. Pursuant to Factual Findings 3 and 7, Petitioner is not entitled for reimbursement for the visual processing assessment conducted by the San Diego Center for Vision Care as Petitioner did not establish the need for this assessment. Petitioner is not entitled for reimbursement for the auditory IEE conducted by Ms. Wiskerchen as the District properly determined that Student did not have an auditory processing disorder.

Issue Four: Whether, during the 2005-2006 school year Student was eligible for special education services under the designation of SLD, and whether the District failed to properly consider all relevant information in its eligibility determination

A. Pursuant to Factual Findings 16 through 21, District properly evaluated all information at the September 30, 2005 IEP meeting and determined that Student was not eligible for special education services pursuant to a designation of SLD as Student's academic discrepancies were ameliorated by the assistance and modifications provided by Ms. Rogers and the reading intervention program. Ms. Roger's and Ms. Ekenstam's testimony, Student's report card and test scores established that Student made adequate academic progress.

B. Pursuant to Factual Findings 16 through 21, the District complied with Education Code section 56329(b) by properly considering the information in the IEEs Parents presented at the IEP meeting.

Issue Five: Whether, during the 2005-2006 school year, the District failed to reassess Student for special education services under the designation of SLD, based upon Student's failure to make sufficient progress in the areas of written conventions and spelling, and Student's ongoing auditory and visual processing problems.

A. Pursuant to Factual Findings 22 through 26, the District did not need to reassess Student during the 2005-2006 school year. Ms. Rogers and Ms. Ekenstam established that Student was making adequate academic progress and the District provided accommodations and modifications that ameliorated Student's academic discrepancies.

ORDER

1. As to the District's failure to properly assess Student's visual processing disorder, the District shall reimburse Parents within 30 days of the Decision in the amount of $3889.14 for the psychoeducational assessment conducted by Dr. Owen, plus $89.76 for the transportation to and from Dr. Owen's office for the evaluation.

PREVAILING PARTY

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

1. Concerning Issue 1, the District prevailed as to whether the District assessed Student in all areas of suspected disability, and the adequacy of the auditory and speech and language assessments. Petitioner prevailed as to the visual processing assessment only.

2. Concerning Issue 2, the District prevailed.

3. Concerning Issue 3, Petitioner prevailed as to the reimbursement for Dr. Owen's assessment only.

5. Concerning Issues 4 and 5, the District prevailed.

RIGHT TO APPEAL THIS DECISION

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

DATED: June 16, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings
Special Education Division