

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

In the Matter of:

GLENDALE UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N2007040362

DECISION

Ann F. MacMurray, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this matter on June 12 and 13, 2007, in Glendale, California.

Jennifer R. Rowe, Attorney at Law, appeared on behalf of Petitioner, Glendale Unified School District (District). Lou Stewart, Assistant Superintendent for the District, was also present at the hearing.

R. Vanessa Alvarado and Melissa Canales, Attorneys at Law, appeared on behalf of Respondent, Student (Student). Student was not present during the hearing. Student's mother (Parent) was present throughout the hearing.

District filed its original request for due process hearing on April 12, 2007. On April 27, 2007, the parties agreed to continue the due process hearing. Oral and documentary evidence were received during the hearing. The record remained open for the submission of written closing arguments by July 2, 2007, when the record was closed and the matter was submitted for decision.

ISSUES¹

1. Whether District's speech and language assessment conducted as part of Student's triennial review and in preparation for her February 20, 2007, Individualized Education Program (IEP) team meeting is appropriate.

2. Whether District's occupational therapy (OT) assessment conducted as part of Student's triennial review and in preparation for her February 20, 2007, IEP team meeting is appropriate.

FACTUAL FINDINGS

1. Student is an eight-year-old girl, born on August 13, 1998, who resides in the District with her parents. She was born premature, experienced delayed developmental milestones, and did not speak until she was nearly two years old.

2. Student was determined to be eligible for special education and related services under the categories of specific learning disability and speech and language impairment. Student's first triennial assessment was completed on May 17, 2004. The next triennial assessment was due May 17, 2007. Student is currently enrolled in Edison Elementary School's Special Day Class (SDC).

3. In conducting the reevaluation, no single measure or assessment may be used. A variety of technically sound assessment tools and strategies must be used to gather relevant functional, developmental and academic information, including information provided by the parent. The child must be assessed in all areas of suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. A developmental history must be obtained when appropriate. Assessment materials must be selected and administered in the student's native language and must be free of racial, cultural and sexual discrimination. The assessment materials must be valid and reliable for the purposes that they are used and that are sufficiently comprehensive and tailored to evaluate specific areas of educational need. Trained, knowledgeable and competent personnel must administer the assessments which must be administered in accordance with any instructions provided by the producer of such assessments. The persons who assess Student must prepare a written report regarding assessment. The written report must note whether Student needs special education and related services and the basis for making that determination, the relevant behavior noted during the observation of Student, educationally relevant health and development and medical findings, if any, and a determination concerning the effects of environmental, cultural, or economic disadvantage where appropriate.

¹ Student did not challenge the timeliness of District's filing of the due process complaint.

Speech and Language Assessment

4. The District contracted with a non-public agency (NPA) to provide speech and language services and assessments. Ms. Nadia Benchabane, a Speech and Language Pathologist, provided Student's services and conducted the speech and language assessment. Ms. Benchabane received her Bachelor of Science in Speech Language Pathology in May 2003, and Master of Science in Speech Language Pathology in 2005. She participated in the Spanish Abroad program in Costa Rica in May 2005. Ms. Benchabane has worked with over 200 clients, eighty percent of whom were school age. Her duties include speech and language screenings, assessments, therapy services and IEP meeting participation. Ms. Benchabane is qualified to perform speech and language assessments and services.

5. On May 11, 2006, the IEP team determined that Student displayed a communication disorder in the area of articulation and Student began receiving speech and language services once a week for 30 minute sessions from Ms. Benchabane. Parent was present at this meeting. Student's goal was to be able to produce the "s" sound in all positions of words, phrases and sentences.

6. At an addendum IEP meeting on September 20, 2006, Ms. Benchabane reported that Student had met her articulation goal and requested permission to test Student. An assessment plan developed at that meeting authorized the speech and language testing. Parent attended that meeting, provided input, agreed to the reassessment, and expressed no concerns regarding Student's speech progress.

7. Ms. Benchabane conducted her reassessment on October 13, 2006. Subsequently, she was authorized to conduct Student's triennial assessment which she performed on January 19, 2007.

8. Assessment information from both dates, October 13, 2006, and January 19, 2007, is contained in Ms. Benchabane's written report.

October 13, 2006 Speech and Language Assessment

9. On October 13, 2006, as indicated in her report, Ms. Benchabane administered three tests: the Goldman Fristoe Test of Articulation (GFTA), the Quick Structured Interview (QSI) and the Oral Mechanics Exam (OME). The testing was administered in a quiet room; Student behaved well, followed directions and was not distracted.

10. The GFTA is a widely used standardized test designed to measure articulation abilities. Ms. Benchabane used the most current version and followed the instructional manual. Student scored 100 on the GFTA which is within normal limits. She made two errors, once each, using the "f" sound for "th" and the "b" sound for "v." On page four of the assessment, there is a pre-printed question which asks whether Student's speech and language impairment is primarily the result of environmental, cultural or economic factors. Ms. Benchabane checked the "No" box.

11. The QSI is a commonly administered, informal test used to judge conversationally connected speech, which is the ability to speak sentence after sentence. Student's speech was 100 percent intelligible. While at times, Student demonstrated a lateral lisp for the "s" in the medial position of words, these errors were very inconsistent and Student was able to self-correct. Student was able to follow up to three-step directions and, when asked questions, she responded with complete sentences using appropriate grammar and vocabulary.

12. The OME is also an informal test used to test lip, tongue and jaw muscle strength which are important to articulation. This test was within normal limits.

13. Ms. Benchabane reported that Student tested within normal limits in voice, fluency, articulation and language. Consequently, Ms. Benchabane determined that Student was no longer eligible for speech and language services and recommended that these services be discontinued.

14. On December 13, 2006, the IEP team convened to discuss the results of Ms. Benchabane's speech and language assessment. While Parent attended this meeting, Student's attorney was not available to attend. Because of this, the team agreed to defer this discussion until the February 2007 IEP meeting during which the triennial assessment would also be discussed.

15. At this December meeting, Parent participated in the development of the proposed triennial assessment plan. The triennial assessment plan included, among others, assessments in the areas of occupational therapy and health and development. Further speech and language testing would assess Student's receptive and expressive skills. Parent was asked if she had any questions and/or additional areas of concern she thought should be addressed. Parent wanted to consult with her attorney before providing additional input and was given a copy of the plan. In a subsequent letter between the District's attorney and Parent's attorney, the District reiterated its request for feedback from Parent regarding additional areas of concern. Parent responded by letter through her attorney listing areas of concern, however, the letter specifically stated that it was not an all-inclusive list. In this letter, Parent's request of one-on-one speech and language services was the only request regarding these services. Parent consented to the triennial assessment plan on December 22, 2006.

16. Ms. Benchabane was given a copy of Parent's letter of concern which she discussed with certain other IEP team members, specifically Special Day Class (SDC) teacher Tabitha Hahm and school psychologist Celeste Kim. The only other triennial assessment determined to be necessary was an adaptive physical education assessment.

17. Parent provided no other input prior to the January 19, 2007, triennial speech and language assessment. Ms. Benchabane's written report does not summarize Parent's input she did obtain.

January 19, 2007 Speech and Language Assessment

18. On January 19, 2007, Ms. Benchabane tested Student's receptive and expressive language skills. Ms. Benchabane administered three additional tests: the Clinical Evaluation of Language Fundamentals (CLEF-4), the Expressive One Word Picture Vocabulary Test (EOW-PVT), and the Test of Auditory Processing Skills (TAPS).

19. The CELF-4, widely used in the field, is used for the identification, diagnosis, and follow-up evaluation of language and communication disorders in students ages five to twenty-one. As permitted by the test manual, and following those instructions, Ms. Benchabane administered certain subtests, as dictated by Student's needs. Student scored within normal limits for receptive and expressive and core language skills. Student's scores were commensurate with her score on the Peabody Picture Vocabulary Test given by California State University-Los Angeles on December 6, 2006. Parent provided the Peabody test result to Ms. Benchabane.

20. The EOW-PVT, a widely used expressive language test, tested Student's ability to name objects, actions and concepts pictured in illustrations. Ms. Benchabane followed the manual's instructions and administered the entire test to Student. Student expressed average, age-appropriate vocabulary skills. The expressive language and word retrieval results improved over the same test administered in the spring of 2004.

21. The TAPS is a widely used, standardized test for students who have auditory processing needs. This test is an individually administered assessment of auditory skills necessary for the development, use and understanding of language commonly used in academic and everyday activities. As permitted by the test manual, and following those instructions, Ms. Benchabane administered certain subtests, as dictated by Student's needs. Overall, Student was able to process incoming auditory information within average limits. Student did score slightly below average recalling a string of numbers, number memory forward and reversed, but these subtests scores did not indicate severe difficulty with memory or processing.

22. Student was also rated on the TAPS auditory phonologic index and on auditory cohesion. According to the auditory phonologic index, Student was able to discriminate between sounds within words, segment words into morphemes, and blend phonemes into words. Auditory cohesion is a higher order linguistic skill that requires that Student understand what is said and to be able to use inferences, deductions and abstractions to understand the meaning of a passage. Student was able to answer questions by finding the correct answer after a sentence or short passage was read to her.

23. At the time Ms. Benchabane administered the TAPS, she was not aware that the TAPS had been recently administered to Student at Children's Hospital Los Angeles. She learned about the prior administration of this test minutes before the February 2007 IEP team meeting. When Ms. Benchabane learned about this prior testing, she had some concern about "learned affect." A comparison of the test result, however, alleviated this concern.

Both tests for phonology were within the average range, and, even though Student's auditory cohesion was slightly above the average range, there was no significant statistical difference between the two scores.

24. In addition to testing, Ms. Benchabane interviewed SDC teacher Ms. Hahm. Ms. Hahm reported that Parent is very involved and concerned with Student's education and that she speaks with Parent a few times a week. Parent reports on Student's home progress and has concerns about Student's handwriting. Parent did not report any speech concerns to Ms. Hahm. Ms. Hahm herself had no concerns about Student's articulation abilities as she is very verbal and understandable. Ms. Hahm noticed an occasional slight lisp with the "s" sound only when Ms. Benchabane brought this to her attention. As noted in Ms. Benchabane's written report, Ms. Hahm had no concerns regarding Student's observed classroom behavior. Ms. Benchabane's report does note Ms. Hahm's concern with Student's difficulty reading.

The Effects of Environmental, Cultural or Economic Disadvantage

25. Because the January 19, 2007 assessment was in preparation for the triennial IEP review, Ms. Benchabane fortified her October 13, 2006 written report with the January 2007 testing results and analysis of other information she received throughout the assessment period. In the January 2007 report, Ms. Benchabane noted that the October 13, 2006 GFTA score of 100 was an improvement over the May 17, 2004 score. Ms. Benchabane also commented that Student's two GFTA errors, substituting the "f" for the "th" and the "b" for the "v," were "...environmental and cultural differences of the Spanish language."

26. Ms. Benchabane stated that she learned through Student that Student is exposed to the Spanish language through various means. Student's grandmother speaks Spanish and Student has attended events where Spanish is spoken. Student also lives in a community where Spanish is spoken. Furthermore, many of the other children at Edison Elementary speak Spanish. Ms. Benchabane stated that all students at the school have this cultural and environmental influence, and, thus, while first stating that all students have difficulty with the "th" and "v" sounds, upon clarification, revised her testimony to state that ninety-five percent of the Students have difficulty with those sounds. Ms. Benchabane concluded that Student's errors on the GFTA were attributable to a dialectical difference rather than a speech delay.

27. As noted in Legal Conclusion 6, California law requires that the written report must note a determination concerning the effects of environmental, cultural or economic disadvantage where appropriate. Student contends that the speech and language assessment was defective because the assessor made culturally discriminatory and culturally biased conclusions. Parent stated that no family members speak to Student in Spanish, that English is spoken in her household, and that the grandparents and friends comply with Parent's wish that English only be spoken. Parent states that Student does not understand Spanish and estimates that Student is exposed to Spanish approximately five percent of her day.

28. The reason for Student's errors, whether a dialectical or cultural difference, did not change Student's test scores. The speech and language testing showed that Student's voice, fluency, articulation and language were all within normal limits. The tests results for receptive and expressive language were within average limits with the exception of her slight difficulty in recalling a string of numbers. Consequently, Ms. Benchabane determined that Student was no longer eligible for speech and language services and recommended that these services be discontinued. The reason for the error, cultural influence, was not the deciding factor whether speech and language services should be discontinued. Student's testing did not support a further need for these services. Student's contention in this regard is unfounded.

Failure to Observe Student in Classroom or Note Relevant Behavior in Assessment

29. As noted in Legal Conclusion 6, California law requires that the written report note relevant behavior during the observation of Student. Ms. Benchabane observed Student in the classroom while Student was working at a table with a small group of peers. Ms. Hahm corroborated the fact that Ms. Benchabane observed Student in her classroom. As noted in Ms. Benchabane's report, Ms. Hahm expressed no concerns regarding Student's classroom behavior. Parent contends that Ms. Benchabane failed to observe Student in the classroom; however, Parent presented no evidence to refute the testimony that Ms. Benchabane observed Student in the classroom. Thus, Parent's contention is unfounded.

30. In addition to classroom observation, Ms. Benchabane also observed Student during speech therapy sessions. In her report, in response to the question regarding behavioral concerns during the assessment, Ms. Benchabane marked the preprinted box corresponding to "None." Parent contends that Ms. Benchabane failed to include Student's relevant behavior in her assessment. It is not that Ms. Benchabane failed to consider relevant behavior during the observation of Student or to note it in her report, Ms. Benchabane did not report any observed behavior relevant to her speech and language assessment because there was no pertinent behavior to report. Student's speech and language expert, Venessa LeeAnn Roca, agreed that if behavior was not noted, she would assume that behavior was not an issue. Thus, Parent's contention that Ms. Benchabane failed to include Student's relevant behavior in her assessment is unfounded.

Failure to Review Student's Developmental, Health or Medical History

31. As noted in Legal Conclusion 4, California law requires that a developmental history be obtained when appropriate. Further, the law requires that a written assessment report note educationally relevant health and developmental and medical findings, if any.

32. As discussed in Factual Findings 1, 2 and 5, Student is an eight-year-old girl, born on August 13, 1998. She was born premature, experienced delayed developmental milestones, and did not speak until she was nearly two years old. Student has been receiving some form of special education services since October 2001, and speech and language services since May 2006. As discussed in Factual Findings 5, 6, 14 and 15, Ms. Benchabane

began providing these services in approximately May 2006. She participated in IEP meetings where Parent was present and participating, to varying degrees, in May 2006, September 2006 and December 2006.

33. As discussed in Findings 16 and 24, Ms. Benchabane also interviewed Ms. Hahm, reviewed Parent's letter of concerns dated December 2006, and discussed those concerns with certain other IEP team members. During the one and one-half years Ms. Benchabane provided Student's therapy, and during these IEP meetings and consultations, no one raised any ongoing health or medical issues relevant to her current speech and language assessment. While Ms. Benchabane did have an understanding of Student's premature birth and developmental delays, she did not independently include any of this information in her report because these medical issues did not impact Student's current speech and language needs.

34. In the speech and language assessment report in the space designated relevant health/developmental/family history, Ms. Benchabane merely annotates "see report" in the vision and hearing screening section. Parent contends that Ms. Benchabane failed to review Student's developmental, health or medical history and/or did not document such information in her report. Ms. Benchabane did review Student's file and Student's history was covered in prior assessments, particularly in the report from the school nurse, even though the most recent nurse's report had not been generated at the time Ms. Benchabane completed her written report. In the context of a triennial review, while a speech and language assessment must thoroughly assess those needs, it is not designed to stand alone, but must be considered in the context of other assessments. Student's expert, Ms. Roca, agreed that in the context of a school-based reassessment detailing background and medical information was not necessary since it would be contained in prior reports, even though, had it been her report, she would have provided more detail, such as adding the phrase "overall developmental milestones delayed." Thus, Parent's contention that Ms. Benchabane failed to include Student's relevant developmental, health or medical history in her assessment or in her report is unfounded.

Failure to Obtain Parent Input For The Assessment

35. As noted in Legal Conclusion 3 and 5, in conducting the reevaluation, no single measure or assessment may be used, but a variety of technically sound assessment tools and strategies must be used to gather relevant functional, developmental and academic information, including information provided by the parent. Parent stated that Ms. Benchabane did not seek her out directly to obtain information regarding concerns for Student. Student contends that Ms. Benchabane failed to obtain direct Parent input. Ms. Benchabane stated that she did solicit input from Parent regarding Student's speech and language at home but did not annotate it in her report.

36. Whether or not Ms. Benchabane directly solicited information from Parent, while prudent, is not the test. The law does not require that information gathered from Parent be obtained in a certain manner. As discussed in Factual Findings 5, 6, 14, 15, 16 and 24,

Ms. Benchabane began providing Student's speech and language services in approximately May 2006. She participated in IEP meetings where Parent was present and participated, to varying degrees, in May 2006, September 2006 and December 2006. Ms. Benchabane also interviewed SDC teacher Ms. Hahm who speaks with Parent a few times a week, reviewed the Parent's letter of concerns dated December 2006, and discussed those concerns with certain other IEP team members. Ms. Benchabane obtained Parent input.

37. Ms. Benchabane used a variety of technically sound assessment tools in her assessments of October 13, 2006, and January 19, 2007, and information from a variety of sources, including the SDC teacher, Parent, Student and from her own observations. The tests were administered in English, Student's language. The test instruments were valid and reliable for the purposes for which they were used and were free of racial, cultural and sexual discrimination. Ms. Benchabane was trained and knowledgeable and she administered the tests in accordance with testing instructions.

38. In her updated written report dated January 19, 2007, Ms. Benchabane continued to recommend discontinuing Student's speech and language services since Student's current test results showed that her voice, fluency, articulation and language were all within normal limits, and that her speech and language needs could be met in the general education classroom.

39. The evidence showed that the District properly assessed Student in accordance with statutory requirements. The District has established that its speech and language assessment was appropriate.

Occupational Therapy Assessment

40. At the December 13, 2006 IEP meeting, the triennial assessment plan presented to Parent included an OT assessment. The District contracted with a NPA to provide OT services, assessments and IEP team meeting participation. Ms. Kary Vander Borgh and Ms. Tamara Mitchell, both licensed occupational therapists, provided Student's OT services and they conducted the triennial OT assessment. Ms. Vander Borgh obtained her Bachelor of Science in Occupational Therapy in 2004 and is certified in sensory integration. She has provided OT services and conducted OT evaluations on fifty to sixty school aged children. She currently serves fifteen to twenty school children. Ms. Mitchell obtained her master's degree in Occupational Therapy in 2005. She has provided OT services to approximately one hundred school aged children. Ms. Mitchell has conducted OT evaluations on approximately forty school children. She currently serves about thirty school aged children. Their duties include OT screenings, assessments, therapy services and IEP meeting participation. Ms. Vander Borgh and Ms. Mitchell are qualified to perform OT services.

41. For one-hour a week for the last year and one-half, Ms. Vander Borgh has provided Student's classroom OT services in the areas of fine motor and visual motor skills related to Student's handwriting and sensory needs relating to body tone and posture at her

desk. Ms. Mitchell has provided Student's clinic OT services one hour a week since October 2006. Her focus was on improving upper body strength to assist her handwriting, posture and gross motor planning. Ms. Vander Borgh and Ms. Mitchell's collaborative written OT assessment is dated February 13, 2007. District contends this assessment is appropriate.

Failure to Review Student's Prior Records

42. As discussed in Legal Conclusion 5, in conducting a reevaluation of Student, the IEP team and other qualified professionals must review existing data including evaluations, information provided by the parents, current classroom-based observations and observations by teachers.

43. In preparation for their assessments, Ms. Vander Borgh and Ms. Mitchell both credibly testified that each reviewed Student's prior records, including IEPs, past assessments and their Student charts, including her work samples. Student contends that the OT assessment is defective because Mr. Vander Borgh and Ms. Mitchell failed to review Student's prior records or document that review in their report, however, Student did not refute this testimony nor provide any basis for disbelief. Despite the fact that neither therapist could detail what records were reviewed or when, they were both knowledgeable about Student and could testify about salient details, as further detailed in this Decision, which fortified their credibility. The law requires review of existing evaluation information; it does not require that the review be detailed in the written report. Ms. Vander Borgh and Ms. Mitchell appropriately reviewed Student's prior records.

Failure to Use and Review Input From Parent

44. As discussed in Legal Conclusion 5, when conducting a reevaluation, the IEP team and other qualified professionals must consider information provided by the parent.

45. In preparation for the triennial assessment Ms. Vander Borgh and Ms. Mitchell together met with Parent for forty-five minutes to discuss her concerns. Parent related concerns about Student's strength, handwriting and sensory issues. As noted in Factual Finding 62, Ms. Vander Borgh specifically administered a sensory processing test as a result of Parent's concern.

46. Student contends that the OT assessment is inappropriate because Ms. Vander Borgh and Ms. Mitchell failed to use and review Parent input or document this input in their written report. Parent stated that this forty-five minute discussion was not scheduled with her in advance, otherwise she would have prepared by compiling a list of discussion items. She thought the therapists were advising her about their conclusions concerning Student, not inviting her to express concerns. According to Parent, had she been able to compile a list,

she would have reported concerns over Student's messy handwriting and overly tight and improper handwriting grip.²

47. In addition to this forty-five minute meeting, Ms. Vander Borgh speaks with Parent every few months about Student's progress. Parent is very informed and engaged with both of her special needs children. In these conversations, Parent raises concerns and often gives more information than is relevant to OT. Ms. Vander Borgh extracts appropriate information for OT needs. Ms. Mitchell speaks with Parent whenever she brings Student to the OT clinic.

48. There were no discussions with Parent noted in the written OT assessment.

49. Ms. Vander Borgh also spoke with Ms. Hahm. Ms. Hahm reported that she speaks with Parent a few times a week concerning Student's progress at home and that Parent is very involved with Student's education. Parent expressed concern to Ms. Hahm over Student's handwriting, physical weakness and difficulty completing homework. Ms. Hahm stated that she had no concerns with Student's homework as she was on par with other Students. Student is able to sit at her desk for the entire length of an activity and is rarely observed to lay her head on her desk or rest on her arms to support the weight of her upper body as she had done in the past. Ms. Hahm has also observed Student doing pushups and yoga and noted that Student has physical skill that compares with other second graders. Student can jump rope, play on the playground and do jumping jacks. Student did have messy handwriting and wrote outside the lines but her handwriting has since improved.

50. As more fully discussed below, Parent's concerns over Student's handwriting, muscle tone/upper body strength and perception were considered in the OT assessment. The law requires that Parent information be considered, it does not require that input be detailed in the written report. When performing the OT assessment, Ms. Vander Borgh and Ms. Mitchell appropriately took into account Parent input directly from Parent and from information provided to them by Ms. Hahm's discussions with Parent.

Failure to Comprehensively Assess Handwriting, Visual Perception and Upper Body Strength

51. Ms. Vander Borgh administered the Functional Educational Checklist (FEC) and the Sensory Profile School Companion (SPSC). Ms. Mitchell administered the Handwriting Without Tears-The Print Tool (TPT). Ms. Vander Borgh and Ms. Mitchell collaborated on the written assessment and each completed their respective portions.

² Parent stated that when Student erases, she erases more words than required. Student applies too much pressure on the pencil breaking the tip. Student also falls at home and lays her head on her arm when doing homework. Parent would have told them that she enrolled Student in kickboxing and Ballet Folklorico because of her concern over Student's muscle tone. Lastly, Parent would have expressed concern over Student's perception. As Parent explained it, Student touches everything and always wants to be close to her.

Handwriting

52. As discussed in Legal Conclusion 4, Student must be evaluated in all areas of suspected need. Testing administered by Ms. Vander Borgh and Ms. Mitchell which evaluates handwriting includes the FEC and the TPT. Student contends that the District failed to evaluate Student's ability to space letters, form numbers, copy from a far point, use the correct handwriting grip and use appropriate pressure while writing.

53. The FEC is a formal but non-standardized assessment which is frequently used with school children. The FEC checklist is properly administered by the teacher who sees Student daily. In this case, Ms. Hahm filled out the checklist. Ms. Vander Borgh gave Ms. Hahm instructions on filling out the checklist. For those areas that she had never observed or had not taught Student, Ms. Hahm used "N/A," for not applicable. For instance, she had never taught Student cursive writing and wrote N/A for that observation. For skills she had observed, Ms. Hahm noted Student's difficulty with two skills: tying her shoes and keeping letters a constant size and within the lines when writing. Ms. Vander Borgh assessed the FEC results provided by Ms. Hahm and noted that Student was functioning at a very optimal level, almost independently.

54. Ms. Mitchell administered the TPT. This test is a non-standardized, formal assessment used to evaluate handwriting difficulties. The test assesses capitals, numbers and lowercase letter skills. The skills evaluated include memory, orientation, placement, size, start, sequence, control and spacing. Ms. Mitchell followed the manual's instructions when administering this test. She sat next to Student, gave her specific test paper and verbal instructions. Overall, Student did well on this test but she still had difficulty with letter sizing and proportion.

55. Ms. Mitchell did not test Student on spacing, which analyzes spaces between letters in words and between words in sentences, because she already had samples of Student's writing. She also did not test Student's writing of numbers. Student argues, but did not offer any evidence, that failing to assess numbers or test spacing was contrary to the manual instructions and otherwise invalidated the test.

56. Student contends that Ms. Mitchell's failure to complete the cover page of the TPT affects the comprehensiveness of Student's handwriting assessment. Ms. Mitchell testified that the manual does not require that the cover page be completed. She generally does not complete that page, but notes items which she wishes to specifically recall, inferring that she would have made notes on other items had any of those items been other than ordinary. In this case, she noted that Student gripped her pencil with a thumb grasp. Because Ms. Mitchell did not make a note of pencil pressure, it can be inferred that it was ordinary.

57. Student did not present any evidence to show that filling out the cover page of the TPT, particularly the sections on "Physical Approach and Fine Motor and School Papers Reviewed," was required. While it might be prudent to complete this information in order to

refresh one's memory as well as to readily document that information for future therapists and IEP teams, Ms. Mitchell credibly recalled Student's actual test administration and made a pertinent note on the item she wished to recall that was specific to Student.

58. As noted in Factual Findings 43, Ms. Mitchell was found credible with respect to having reviewed Student's file, therefore, failing to fill out the section on "School Papers Reviewed" did not affect the comprehensiveness of the handwriting assessment.

59. Further fortifying Ms. Mitchell's credibility regarding the information requested in the "Physical Approach and Fine Motor" section of the TPT is the written assessment compiled by Ms. Mitchell and Ms. Vander Borgh. The "Physical Approach and Fine Motor" section asks for information on Student's sitting posture, attention and effort and pencil grip. The assessment report captures this information in the general discussion as well as the discussion of goals. The general narrative states that Student was able to sit at her desk for the entire length of an activity and was rarely observed to lay her head on her desk or rest on her arms to support the weight of her upper body as she has done in the past. Regarding the goal to improve upper body strength as needed to complete school related tasks, Student met the objective of maintaining an upright posture while sitting without needing forearm support or slouching. She only partially met the objective of maintaining a dynamic tripod grasp of her pencil because she often forgets, using an alternative grasp which decreases the amount of precision and fine movement. As discussed in Factual Finding 67, Student also only partially met the objective of copying from a far-point model.

60. In light of the information detailed in the OT assessment report, in addition to Ms. Mitchell's testimony, the failure to complete the cover page to the TPT did not affect the comprehensiveness of Student's handwriting assessment.

61. The areas identified by Parent as deficient were directly addressed in the OT evaluation, with the exception of pencil pressure. Student's handwriting was, therefore, comprehensively assessed by Ms. Vander Borgh and Ms. Mitchell through the TPT and FEC tests, observations, discussions with Parent and Ms. Hahm as well as discussions between themselves as Student's OT therapists. The portion of the OT assessment regarding handwriting was appropriate.

Visual Perception

62. As discussed in Legal Conclusion 4, Student must be evaluated in all areas of suspected need. Testing administered by Ms. Vander Borgh which evaluated visual perception was the SPSC test. Ms. Vander Borgh administered this test because of Parent's concern. Student contends that the District failed to evaluate Student's visual perception.

63. The SPSC is a standardized assessment tool for measuring Student's sensory processing abilities and their effect on the Student's functional performance in the classroom and school environment. Ms. Vander Borgh administered the test in its entirety. This questionnaire was completed by the classroom teacher, Ms. Hahm, who sees Student daily.

The questionnaire contains statements about children's responses to sensory events in daily life. The teacher reports how frequently a child engages in each of 62 behaviors to obtain perceptions of the child's sensory processing in relation to four school factors. It categorizes the child's performance as "typical," "probable difference" or "definite difference." A "probable difference" is considered to be one standard deviation above or below the norm and creates a probable cause for concern. A "definite difference" is defined as two standard deviations above or below the norm and creates a definite cause for concern. Ms. Hahm accurately recorded her observations of Student's performance. Ms. Vander Borgh accurately scored the Teacher Questionnaire.

64. Student scored as having "typical performance" in most areas. Student had a "probable difference" in the areas of visual processing as well as registration and sensitivity. Nevertheless, Student's scores in these areas were very close to typical performance criteria. In conjunction with Ms. Hahm's report that those areas were not areas of concern in the classroom, Ms. Vander Borgh concluded that, overall, Student scored as a typical performer.

65. Student contends that failure to give Parent the Sensory Profile Caregiver Questionnaire (Caregiver Questionnaire) to complete affected the comprehensiveness of Student's visual perception assessment. Ms. Vander Borgh stated that the manual does not require that the Caregiver Questionnaire be given. She does not give this questionnaire unless a red flag indicates something at home is impacting Student's school performance or Student is being overwhelmed at school. Ms. Vander Borgh knew of no red flag warnings nor that Student was overwhelmed at school and there was no evidence offered to the contrary. In fact, rather than being overwhelmed, Student is described as a social and friendly girl who seeks to assist her teacher, Ms. Hahm, on a regular basis.

66. The portion of the Sensory Profile School Companion User's Manual which was admitted into evidence does not indicate that the Caregiver Questionnaire must be given. While it might make sense to give this questionnaire to the Parent, the failure to do so did not cause the test to be defective. As noted in Factual Findings 45-47 and 49, Parent input was received by other means.

67. Further fortifying Ms. Vander Borgh's credibility is the written OT assessment. As discussed in Factual Finding 64, although the SPSC result noted Student's probable difficulty in visual perception, her score was very close to typical performance criteria. The report also captures important information about visual processing in the goals discussion. Regarding the goal to demonstrate improved visual motor integration as needed to participate in classroom work, Student only partially met the objective of copying from a far-point model in that she continued to have difficulty maintaining proper spacing and sizing and tended to lose her place within a sentence. As reflected in the report, Student made progress in some areas but had continued difficulty in other areas, including visual processing, as Student only partially met one of the important objectives.

68. Student's visual perception was, therefore, appropriately assess by Ms. Vander Borgh through SPSC testing, observations, discussions with Parent, and the SDC teacher and discussions with Ms. Mitchell. Recognizing Student's continued difficulties, the final recommendation was that OT services be reduced but not discontinued. The portion of the OT assessment regarding visual processing was appropriate.

Upper Body Strength

69. As discussed in Legal Conclusion 4, Student must be evaluated in all areas of suspected need. Ms. Vander Borgh and Ms. Mitchell assessed Student's upper body strength through observation since no standardized or non-standardized test was administered to assess this goal. Student contends that the District failed to evaluate Student's upper body strength; however, no evidence was offered to refute the District's evidence in this regard.

70. Improved upper body strength as needed to complete school related tasks was one of Student's specific OT goals. Another of Student's OT goals, improved motor planning, is related to upper body strength. As noted in Factual Findings 45-47 and 49, input on these goals was received from Ms. Hahm and from Parent.

71. Ms. Mitchell provided clinic based OT which is a large gymnasium with lots of equipment and table-top activities. A typical session includes work on gross motor skills. Student works with the equipment and engages in other activities such as hanging from a trapeze and running an obstacle course. Toward the end of the session, Student works on fine motor tasks.

72. Regarding the goal to improve upper body strength as needed to complete school related tasks, Student met two of three objectives. Student met the objective of maintaining an upright posture while sitting without needing forearm support or slouching. She only partially met the objective of maintaining a dynamic tripod grasp of her pencil because she often forgets, using an alternative grasp which decreases the amount of precision and fine movement.

73. Regarding the goal of improved motor planning to successfully participate in classroom and school environment, Student met all three objectives. The objective pertinent to upper body strength is that Student will initiate and participate in novel gross motor activities with minimum assistance in three out of five opportunities.

74. In their written report dated February 13, 2007, Ms. Vander Borgh and Ms. Mitchell recommended decreasing OT services to a 30 minute, once a month consult with the teacher.

75. Ms. Vander Borgh and Ms. Mitchell used a variety of technically sound assessment tools in their assessments, information from a variety of sources, including the SDC teacher, Parent, Student and from their own observations. The tests were administered in English, Student's language. The test instruments were valid and reliable for the purposes

for which they were used and were free of racial, cultural and sexual discrimination. Both OT therapists were trained and knowledgeable and they administered the tests in accordance with testing instructions. The written report provided, among other things, a basis for determining that OT services should be decreased and noted relevant behavior during the observation of Student.

76. The evidence showed that the District properly assessed Student in accordance with statutory requirements. The District therefore properly assessed Student's occupational therapy needs.

LEGAL CONCLUSIONS

Applicable Law

1. The Petitioner has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].) District, as the Petitioner, has to show that its assessments were appropriate.

2. In order to meet the continuing duty to develop and maintain an appropriate IEP, the school district must assess the educational needs of the disabled child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) The school district may conduct a reassessment of the special education student not more frequently than once a year, but must reassess at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).)

3. In conducting the reevaluation the district shall use a variety of technically sound assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining whether the child is a child with a disability, and the content of the child's IEP. 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b)(1)(3). No single measure or assessment may be used as the sole criterion for this determination. (20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

4. Assessments and reassessments must be conducted according to legal requirements that prescribe both the content of the assessment and the qualifications of the assessor. The district must assess the child in all areas of suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. (20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4); Ed. Code, § 56320, subd. (f).) In California, a developmental history must be obtained when appropriate. (Ed. Code, § 56320, subd. (f).) The district must select and administer assessment materials that appear in the student's native language and that are free of racial, cultural and sexual discrimination. (20 U.S.C. § 1414(b)(3)(A)(i)(ii); 34 C.F.R. § 300.304(c)(1)(ii); Ed. Code, § 56320, subd. (a).) The district must administer assessment materials that are valid and reliable for the purposes for which the assessments are used. (20 U.S.C. § 1414(b)(3)(A)(iii); Ed. Code, § 56320, subd.

(b)(2).) The district must administer assessment materials that are sufficiently comprehensive and tailored to evaluate specific areas of educational need. (20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(6); Ed. Code, § 56320, subd. (c).) Trained, knowledgeable and competent district personnel must administer special education assessments and they must be administered in accordance with any instructions provided by the producer of such assessments. (20 U.S.C. § 1414(b)(3)(iv)(v); Ed. Code, §§ 56320, subd. (b)(3), 56322.)

5. As part of the reassessment, the IEP team must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1); 34 C.F.R. § 300.304(b)(1); Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student, to decide whether modifications or additions in the child's IEP are needed and to decide whether the child continues to need special education and related services. (20 U.S.C. § 1414(c)(1)(B); 34 C.F.R. § 300.305(a)(2)(iii)(B); Ed. Code, § 56381, subds. (b)(2)(B) & (D).)

6. California law requires that the persons who assess Student must prepare a written report regarding assessment results including whether Student needs special education and related services and the basis for making that determination, the relevant behavior noted during the observation of Student, educationally relevant health and development and medical findings, if any, and a determination concerning the effects of environmental, cultural, or economic disadvantage where appropriate. (Ed. Code, § 5632.) Upon completion of the assessments, an IEP team meeting including the parents shall be scheduled to discuss the assessment, the educational recommendations and the reasons for these recommendations. (20 U.S.C § 1414(b)(4); 34 C.F.R. § 300.305(a); Ed. Code, § 56329, subd. (a)(1).)

Determination of Issues

Issue No. 1: Whether District's speech and language assessment conducted as part of Student's triennial review and in preparation for her February 20, 2007, Individualized Education Program (IEP) team meeting is appropriate.

7. Based on Factual Findings 1-39, and Legal Conclusions 1-6, the District's speech and language assessment was appropriate. The assessments complied with statutory requirements.

Issue No. 2: Whether District's occupational therapy (OT) assessment conducted as part of Student's triennial review and in preparation for her February 20, 2007, IEP team meeting is appropriate.

8. Based on Factual Findings 40-76 and Legal Conclusions 1-6, the District's occupational therapy assessments was appropriate. The assessments complied with statutory requirements.

ORDER

The District's speech and language assessment and its occupational therapy assessment were appropriate.

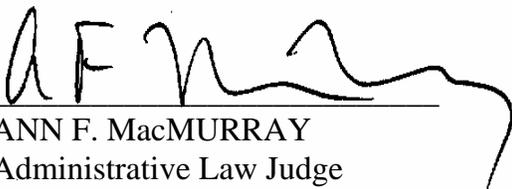
PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicated the extent to which each party prevailed on each issue heard and decided. Here, the District was the prevailing party on all issues presented.

RIGHT TO APPEAL THIS DECISION

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

DATED: July 25, 2007


ANN F. MacMURRAY
Administrative Law Judge
Office of Administrative Hearings
Special Education Division