

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GARVEY SCHOOL DISTRICT,

v.

PARENTS(s) on behalf of STUDENT.

OAH CASE NO. 2008110623

DECISION

Stella L. Owens-Murrell, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on January 28-30, 2009, in Rosemead, California.

Garvey School District (District) was represented at the hearing by James Meeker, Attorney at Law. Ms. Barbara Razo, District Program Supervisor in the Division of Special Education, was present throughout the hearing.

Student, in pro se, was represented at the hearing by her parent (Mother).

District filed a Due Process Hearing request (complaint) on November 19, 2008. On December 29, 2008, a continuance was granted for good cause.

Testimony and documentary evidence was received at the hearing. At hearing, District made a written motion for reconsideration of the ALJ's Order issued January 26, 2009. The motion was taken under submission for issuance of a separate order. The parties were granted leave up to and including February 20, 2009, to file written closing

arguments, and any further briefing on District's motion.¹ The District timely filed written closing argument on February 20, 2009, at which time the record was closed and the matter was submitted.

On Monday February 23, 2009, Student requested a continuance to allow for the late filing of her closing argument. OAH issued an order on February 23, 2009, granting a continuance allowing Student time to file a late closing argument.² The time was extended to Wednesday February 25, 2009. The record was reopened on February 23, 2009, and closed on February 25, 2009, and the matter was re submitted.

¹ On December 9, 2008, District filed a motion for an order to preclude Student's challenge of the adequacy of District's assessment, and for an order limiting issues, and for an order of dismissal of its own due process request on ground that the issues raised by Student's response to District's complaint for hearing were determined in Student v. Garvey School District, OAH Case No. 2007100989, decided on July 14, 2008, and are barred by res judicata and/or collateral estoppel. The undersigned ALJ issued an order on December 15, 2008, denying the motion to dismiss and granting, in part, District's motion to limit issues. On January 20, 2009, Student filed a motion for reconsideration of the December 15, 2008 order. On January 26, 2009, the undersigned ALJ issued an order granting reconsideration of the order limiting issues. On January 28, 2009, District filed a motion for reconsideration. As stated above, the matter was taken under submission for issuance of a separate order.

² On February 24, 2009, District filed opposition to the order continuing and requested reconsideration of the order. On February 25, 2009, OAH denied reconsideration.

ISSUE

Whether District's May 8, 2008 Occupational Therapy (OT) Assessment of Student was appropriate, such that the District need not provide Student with an independent educational evaluation (IEE) at District expense?

FACTUAL FINDINGS

BACKGROUND

1. Student was four years and six months of age at the time of hearing. She lives with her parents in the jurisdictional boundaries of the District. She is eligible for special education services as a student with mental retardation due to Down syndrome.

2. Student transitioned from the Regional Center early start program and enrolled in the District in June 2007. She attends Arlene Bitely Elementary School (Bitely). Student has severe global and cognitive delays and is non-verbal. She participates in the pre-school special day program (SDC), has a one-to-one aide, and she receives related services in speech and language therapy (SLT), physical therapy (PT), and OT.

THE MAY 8, 2008 OT ASSESSMENT

3. On April 22, 2008, District prepared and submitted an assessment plan to Mother for permission to conduct an OT assessment of Student. The assessment plan was a one-page form that indicated OT was the only area to be assessed. The purpose of the assessment plan was to conduct an initial OT assessment to determine if a change in Student's IEP was required. Mother consented to the assessment plan on April 22, 2008.

4. Barbara Razo (Ms. Razo), District program supervisor of special education programs, is responsible for coordinating District's special education curriculum and special education classes. She is also responsible for reviewing assessments and attending IEP meetings. District determined that District OT Michael Ramirez, MA, OTR/L (Mr.

Ramirez) would conduct the assessment primarily because he had been providing OT services to Student and was the most knowledgeable of her OT needs. Ms. Razo did not instruct him in the methodology to use to conduct the assessment nor impose any limitations on Mr. Ramirez's assessment of Student.

5. Mr. Ramirez has both a B.S. degree and a master's degree in occupational therapy from the University of Southern California, which he obtained in 2002 and 2003 respectively. Mr. Ramirez is certified, licensed and registered as an OT by the State of California Board of Occupational Therapy and National Board of Occupational Therapy, with a specialty in pediatrics. He has more than five year's professional experience providing OT to disabled children ages zero to twenty-two years of age in group and individual settings. He also provided therapy using sensory integration theory, neuro-development treatment, and muscle strengthening therapy. He has been employed by District since August 2007, and currently provides OT services to children three to twelve years of age. Student had been receiving OT services since June 2007 twice per week for a total of one hour according to her IEP. Mr. Ramirez took over as Student's OT in August 2007, reviewed Student's IEP, and continued providing the same level of services. He has conducted numerous OT assessments of various students in his capacity, and has participated as a member of numerous IEP teams. Mr. Ramirez was knowledgeable of Student's disability, was properly credentialed and was qualified to conduct the assessment.

6. The assessment tools used by Mr. Ramirez were to determine Student's developmental levels, her sensory-motor skills, self-help skills, cognitive skills and safety awareness. Each of the tools was used to assess specific areas of educational need. The tests and assessment materials were administered by Mr. Ramirez in conformance with the test instructions and were validated for the specific purpose for which they were used.

7. The assessment was administered in English, combined with non-verbal cues

and some prompting. Student is non-verbal, but the language spoken at home is English. Student's IEP also identifies Student's language as "English only." Mr. Ramirez opined that Student did not perform on certain standardized tests because she did not understand the instructions given. He attributed this to Student's global delays and low cognitive levels and not a language problem. At hearing, Mother asserted that Student's language was American Sign Language (ASL). Mother asserted further that Student's non-performance in certain aspects of the assessment was caused by Mr. Ramirez's failure to sign to Student and his failure to include Mother in the assessment to interpret Student's responses to him or his instructions to her. Mother was not persuasive on this point. There is no evidence that Student was deaf and hard of hearing and in need of communication by sign language to access the curriculum or to successfully perform on the OT assessment. Student's teacher, Ms. Razo, and Mr. Ramirez reported that Student learned a few signs for words like "eat" and "all done," but that her signing was inconsistent and did not resemble ASL. The assessment was administered in Student's native language combined with appropriate non-verbal communication.

8. Mr. Ramirez conducted the assessment over several hours. He viewed the assessment as an initial OT evaluation to determine the extent of Student's OT needs. He specifically targeted Student's sensory processing deficits, her muscle tone, strength and endurance, and her lack of safety awareness. He selected a variety of assessment tools including clinical observation of Student during both directed tasks and unstructured free play. In addition to clinical observation, he assessed Student via interviews with Student's teacher, Annette Johnson, one classroom aide, record review, and attempted to administer the Peabody Developmental Motor Scales – 2nd Edition, Fine Motor Scales (PDMS-2). He did not interview Mother because he was focused on obtaining a "snapshot" of Student's activities in her classroom setting. Because of the narrow focus of the assessment, Mr. Ramirez appropriately determined that it was not necessary to interview Mother. The focus

of the assessment was on Student's sensory processing deficits and how they impacted her ability to access the curriculum and how they impacted her safety awareness. He provided a short form sensory profile questionnaire to Ms. Johnson that was not returned to him so he interviewed her instead. The evaluation took place in both the classroom and the OT room settings at Bitely. At the time of the assessment, Student was approximately three years and eleven months of age.

9. The assessment results and recommendations were published by Mr. Ramirez in the Occupational Therapy Evaluation report, dated May 8, 2008. The assessment considered Student's sensory processing needs.³ Mr. Ramirez noted his concerns in the areas of tactile processing⁴, proprioceptive processing⁵, and vestibular

³ Sensory processing refers to the ability of the nervous system to register, process, and integrate sensory information from the environment for adaptive behavior with objects and other human beings. The brain perceives, modulates and integrates sensory information coming in from tactile, proprioceptive, and vestibular systems and uses the information to plan and execute adaptive behavior. If the brain is not processing this information correctly, then an individual may have difficulty demonstrating efficient and effective behavior.

⁴ Tactile processing refers to tactile systems that are involved in the discrimination and localization of touch through several different types of sensory receptors in the skin. For example, the system serves as a basic protective mechanism to help a child distinguish between threatening and non-threatening sensations.

⁵ Proprioceptive functions are involved in the localization of joint and muscle movement and position. Proprioceptive processing is important for correct awareness of one's body in space as well as the amount of force one uses.

processing.⁶ Student had decreased tactile processing abilities. She demonstrated a high tolerance for pain, such that when she fell she did not appear to register the pain unless it was extreme. Mr. Ramirez observed a cut on her finger and an injured nail from an injury she sustained while receiving treatment at another facility. She often stumbled during the evaluation but did not complain. The report further noted Student demonstrated decreased proprioceptive processing skills. Student had decreased ability to climb playground equipment with coordinated body movements. She also randomly attempted to let go when climbing playground equipment, indicating poor safety awareness. The report noted that Student required physical guidance to and from the classroom. Student also demonstrated poor posture by slouching in her chair. Concerning vestibular processing, the report noted Student did not tolerate vestibular-based activities. She accepted linear vestibular input, similar to a playground swing but only for a few seconds. If the movement intensified, Student dismounted the swing quickly and unsafely. She did not extend her hands to protect herself from a fall and tended to slouch or lean forward when sitting upright in a fully supported swing. Student showed decreased postural control, proximal joint stability, strength and endurance. She also had difficulty lifting her head against gravity while flat on her stomach. Student demonstrated decreased vestibular processing skills.

10. The report noted that Mr. Ramirez attempted to administer the PDMS-2. This

⁶ Vestibular input refers to the information that is provided by the receptors within the inner ear regarding change of head position. Accurate processing and integration of vestibular information is necessary for the development of muscle tone, ocular control, coordination of eye and hand movements, visual spatial skills, including visual attention, balance, equilibrium, postural control, motor planning, and some speech and language skills.

test was developed to examine gross motor development and fine motor abilities in children. It is a standardized test. However, Student was unable to understand the tasks and was unable to follow the test directions provided by the manufacturers of the test. This test was not completed. Instead, Mr. Ramirez observed Student engaged in other fine motor tasks. Based upon his observation he noted that Student demonstrated decreased fine motor skills, such as turning simple puzzle pieces to fit a puzzle. She also exhibited decreased gross motor skills like using coordinating upper and lower body movements for climbing playground equipment and dismounting the equipment unsafely.

11. Mr. Ramirez also observed Student's behavior and ability to attend to tasks. He noted in the report that Student had difficulties remaining with most activities he presented to her during the assessment, and she exhibited a low attention span. Mr. Ramirez noted that Student required moderate prompting to stay with a task, to transition back to class, and to clean up activities once finished. Again, he attributed her inability to follow his instruction to Student's low cognitive level.

12. Mr. Ramirez recommended techniques for use in Student's classroom to address her needs for some level of sensory input and to address the need for Student to develop muscle tone, to improve her posture, strength and endurance: (1) When seated, Student's feet should be flat on the floor to provide a stable base of support by using an appropriately sized chair and table; (2) Support her back with a wedge or other firm support to assist with maintaining an upright posture and prevent slouching in her chair; (3) Allow her to sit on a move-n-sit cushion or therapy ball (or peanut) when working with tabletop tasks; (4) Provide hand-over-hand assistance when engaged with fine motor activities such as coloring, writing, cutting with scissors, or gluing activities; (5) Physically assist Student with hand movements and gestures during circle time or sing along activities to improve hand coordination; (6) Allow Student to open items on her own during snack time, such as zip lock bags, snack bags, milk or juice cartons to promote hand

and finger dexterity; (7) Use pictures or some other sort of communication device to communicate that it is time to transition from one activity to the next; (8) Attempt to eliminate distractions when working individually with her in class; (9) To improve strength and endurance, have Student carry books or equipment from one side of the room to the other; (10) Encourage Student to initiate opening and closing doors or holding doors open for others; and (11) consistently encourage Student to use both hands when engaged in a bilateral hand task. Finally, the report recommended that Student continue to receive OT services twice a week, 30 minutes each session, with one session in a classroom setting and the other in a clinical environment.

13. Annette Johnson (Ms. Johnson) is Student's special education teacher. She has 20 years of experience in special education. At the time of the OT assessment, she had collaborated with Mr. Ramirez on a weekly basis for more than eight months concerning Student's classroom and clinical OT services. She confirmed Mr. Ramirez's observations of Student's sensory deficits and her lack of motor skills. She reviewed the assessment and agreed that it presented an accurate picture of Student's present levels of performance as of May 8, 2008. She believed the assessment adequately identified Student's needs and that the recommendations by Mr. Ramirez were appropriate. Similarly, Sherry Cheng (Ms. Cheng), one of Student's long-time aides, confirmed the assessment results and believed the assessment recommendations were appropriate.

14. At hearing, Mother asserted that the assessment was not appropriate because Mr. Ramirez was not sufficiently qualified to assess Student's sensory needs. She also asserted the assessment did not accurately describe Student's present levels of performance. Mother further asserted the assessment was incomplete and amounted to nothing more than a "screening" because Mr. Ramirez failed to provide complete background information pertaining to Student's early developmental history, and failed, to discuss the cause or causes of Student's deficits and delays. Mother also claims the

assessment was flawed and incomplete because Mr. Ramirez failed to make more specific treatment recommendations, failed to address all of Student's sensory issues in his recommendations, failed to address Student's oral motor needs, failed to discuss his recommendations for goals and objectives, and failed to solicit her input via a parent interview or questionnaire. Mother also vaguely asserted that the assessment was conducted in a discriminatory manner. Mother was not persuasive concerning any of these assertions for the reasons discussed in Factual Findings 15 and 16 below.

15. Ms. Johnson, who had taught Student since June 2007, was credible in her explanation that the assessment was accurate and complete in all respects and the recommendations appropriately addressed Student's key areas of need at that time. Mr. Ramirez credibly testified that the OT assessment would not have included an oral motor evaluation because it was an area to be addressed by Student's speech and language therapist. Mr. Ramirez further indicated that assessment was not a screening and the focus was calculated to obtain information on Student's sensory and motor needs, which he addressed. He also indicated that there was more than one approach to assessing a child's educational needs. He explained that the assessment did not contain goals and objectives because goals and objectives are typically not included in an assessment rather; they are drafted and presented to the IEP team. The assessment recommendations addressed the relevant areas of Student's sensory needs, motor needs, and emphasized development of Student's core muscle strength and endurance. Moreover, the evidence supports a finding that Mr. Ramirez administered the assessment to Student in a non discriminatory manner.

16. Julie Driscoll (Ms. Driscoll), a SIPT certified OT with more than 20 years of experience. Ms. Driscoll had previously conducted an independent OT assessment of Student and produced a report on May 3, 2008. Mother considered the assessment appropriate. Ms. Driscoll was critical of District's assessment as well. She characterized the assessment as nothing more than a screening because of the absence of discussion about

the causes of Student's deficits and absence of recommendations for treatment. Ms. Driscoll attacked Mr. Ramirez's qualifications to conduct a thorough and more in-depth assessment because he was not a SIPT certified OT. Ms. Driscoll's opinion on this issue is not persuasive and cannot be given any weight. There is no state licensing requirement that an OT assessment involving evaluation of sensory processing disorders be performed by an OT with a SIPT test certification.⁷ Unlike Mr. Ramirez, Ms. Driscoll, who conducted a one-time evaluation of Student in April 2008, had no knowledge of Student prior to the date(s) of her classroom and clinical evaluation, and was not as knowledgeable of Student's disability or her unique educational needs. Accordingly her opinions concerning Student's needs and what constituted an appropriate assessment of her needs was not persuasive when compared to the testimony of Student's teacher, aide and service provider who are with Student on a daily or frequent basis. Significantly, although she was critical of District's assessment Ms. Driscoll agrees with the assessment's recommendation that OT therapy be provided to Student in both the classroom setting and clinical setting.

⁷ The Sensory Integration Praxis Test (SIPT) is a standardized test that is used to assess children between the ages of four and ten years of age, with sensory processing disorders and a wide range of other deficits. Ms. Driscoll testified that the test is contraindicated for children with low cognitive ability. The SIPT is published by a private company, Western Psychological Services. A two-year course of study leading to certification is offered only at University of Southern California. There is no state licensing requirement for SIPT certification of OTs to practice in California. Though it was not required for his profession, Mr. Ramirez had taken two of four SIPT courses offered at USC.

LEGAL CONCLUSIONS

APPROPRIATENESS OF THE MAY 8, 2008 OT ASSESSMENT

1. As the petitioning party, District has the burden of persuasion on all issues (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)
2. District contends the May 8, 2008 OT assessment is appropriate. District further contends that even if its assessment were found inappropriate, Student is not entitled to an IEE funded by District because Student had obtained an IEE just three days prior to District's assessment, which Student believes is appropriate. Student contends that District's OT assessment was flawed and inappropriate because the assessment was incomplete, inaccurate, did not adequately describe Student's development and present levels of functioning, the service recommendations were inadequate, and Mother was not interviewed. Student asserts that she is entitled to an IEE funded by the District.
3. For purposes of evaluating a child for special education eligibility, the District must ensure that "the child is assessed in all areas of suspected disability." (20 U.S.C. § 1414(b)(3)(B); Ed. Code, § 56320, subd. (f).) The determination of what tests are required is made based on information known at the time. (See *Vasherresse v. Laguna Salada Union School District* (N.D. Cal. 2001) 211 F.Supp.2d 1150, 1157-1158 [assessment adequate despite not including speech/language testing where concern prompting assessment was deficit in reading skills].) After a child has been deemed eligible for special education, reassessments may be performed if warranted by the child's educational needs or related services needs. (34 C.F.R. § 300.303(a)(1); 34 C.F.R § 300.536(b) (1999); Ed. Code, § 56381, subd. (a)(1).) Absent an agreement to the contrary between a school district and a student's parents, reassessments must not occur more than once a year, or more than three years apart. (34 C.F.R. 300.303(b)(1); Ed. Code, § 56381, subd. (a)(2).) Assessments are not required prior to a student exiting special education because they have met the maximum age of eligibility under state law. (34 C.F.R. § 300.306(e)(2).)

4. Prior to any assessment, a school district must provide the student's parent with an assessment plan that includes a notice of procedural safeguards. (Ed. Code, § 56321, subd. (a).) The proposed assessment plan must: 1) be in language easily understood by the general public; 2) be provided in parent's native language or other mode of communication used by the parent unless not feasible; 3) explain the types of assessment to be conducted; and, 4) state that no IEP will result from the assessment without parental consent. (Ed. Code, § 56321, subd. (b).) The proposed assessment plan must also give the parent notice that: an IEP team meeting will be scheduled to discuss the assessment, the educational recommendations and the reasons for the recommendations. (Ed. Code, § 56329, subd. (a)(1).) Parental consent is not required to review existing data or to give tests that are given to all children. (Ed. Code, § 56321, subd. (e).) The assessment plan must also include a description of any recent assessments conducted, including independent assessments and any information parents want considered, and information regarding the student's primary language and language proficiency. (Cal. Code Regs., tit. 5, § 3022.)

5. "The assessment shall be conducted by persons competent to perform the assessment, as determined by the local educational agency." (Ed. Code, § 56322.) Occupational therapy assessments must be conducted by qualified medical personnel as determined by the Department of Health Services. (Gov. Code, § 7572, subd. (b).) Occupational therapists are required to have graduated from an accredited school and must currently be registered with the American Occupational Therapy Association. (Cal. Code Regs., tit. 5, § 3051.6, subd (b).) In general, assessors must be knowledgeable about the student's suspected disability and must pay attention to the student's unique educational needs such as the need for specialized services, materials and equipment. (Ed. Code, § 56320, subd. (g).) There is no legal authority to mandate that an OT assessment be performed by someone with advanced certification in administration of a SIPT test. Occupational Therapists may obtain and become specialized in certain post-certification

advanced practices. At present the areas of post-certification advanced practices for OT's are rehabilitation of the hand, wrist and forearm and for swallowing, including instrumental evaluation, endoscopic evaluation, and videofluoroscopic swallowing study. (Cal. Code Regs., tit. 16, § 4150.)

6. A student must be assessed in all areas related to the suspected disability. (Ed. Code, § 56320, subd. (f).) Assessment materials and procedures must be selected and administered so as not to be racially, culturally or sexually discriminatory, and must be given in the student's native language or mode of communication unless it is not feasible to do so. (Ed. Code, § 56320, subd. (a).) Assessment must also meet the following requirements: 1) are provided and administered in the language and form most likely to yield accurate information on what the pupil knows and can do academically, developmentally, and functionally, unless it is not feasible; 2) are used for purposes for which the assessments or measures are valid and reliable; and 3) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments. (Ed. Code, § 56320, subd. (b).) Assessments must also 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).) No single measure, such as a single intelligence quotient, shall be used to determine eligibility or services. (Ed. Code, § 56320, subds. (c) & (e).)

7. The personnel who assess the student shall prepare a written report that shall include, without limitation, the following: 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) consistent with superintendent guidelines for low incidence disabilities (those effecting less than one percent of the total statewide enrollment in grades K through 12), the need for specialized services, materials, and equipment. (Ed. Code, § 56327.) The report must be provided to the parent at the IEP team meeting regarding the assessment. (Ed. Code, § 56329, subd. (a)(3).)

8. The procedural safeguards of the IDEA provide that under certain conditions a student is entitled to obtain an IEE at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, §§ 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference], 56506, subd. (c) [parent has the right to an IEE as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an IEE].) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an IEE, the student must disagree with an evaluation obtained by the public agency and request an IEE. (34 C.F.R. § 300.502(b)(1) & (b)(2).) The provision of an IEE is not automatic. Code of Federal Regulations, title 34, part 300.502(b)(2), provides, in relevant part, that following the student's request for an IEE, the public agency must, without unnecessary delay, either:

- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(See also Ed. Code, § 56329, subd. (c) [Providing that a public agency may initiate a due process hearing to show that its assessment was appropriate].)

9. Mother signed the District prepared assessment plan and consented to an OT assessment on April 22, 2008. The purpose of the assessment was to determine Student's OT needs specifically her sensory processing deficits, her motor deficits and safety awareness. Barbara Razo testified credibly that the District selected Mr. Ramirez to conduct the assessment because he was competent, experienced and knowledgeable in his field. He had provided eight months of OT services to Student in both a clinical setting and later in the classroom prior to assessing Student. Though Mother implied at hearing that District may have limited Mr. Ramirez in the scope of the assessment, Ms. Razo testified credibly that District did not impose any limitations on the relevant matters to be evaluated in the assessment.

10. The assessment consisted of classroom and clinical observation, interviews of Student's teacher and aide, and review of available records. Contrary to Mother's assertion the materials and procedures used to evaluate Student were selected and administered so as not to be racially, culturally or sexually discriminatory. Mr. Ramirez further testified that because of Student's cognitive delays the assessment was administered in the language and form most likely to yield accurate information of her present levels of performance and functional skills, except where it was not feasible to do so. For example, he abandoned an attempt to administer the PDMS-2 because Student did not understand the instructions given in the test. Thus the test could not be administered in accordance with the instruction provided by the producer of the test. Instead Mr. Ramirez resorted to observation supported by interviews with Ms. Johnson and one of Student's classroom aides. Each of the assessment tools was used to assess specific areas of educational need. Finally, the assessment recommendations were appropriate to meet Student's educational needs in sensory processing, muscle development, endurance, and safety.

11. Student's contentions that the assessment was seriously flawed are not supported in the record. Mr. Ramirez's explanations for not conducting an oral motor examination, and not writing goals and objectives into the assessment, were persuasive. While it would have been appropriate to interview Mother as part of Student's evaluation, because Mr. Ramirez's OT assessment was narrowly focused on obtaining a "snapshot" of Student's activities in the classroom and clinical settings, the failure to interview Mother did not invalidate the assessment or his recommendations. Additionally, despite her criticisms of the assessment tools and methods used, Ms. Driscoll testified that she agreed with the assessment recommendations for provision of OT services in both the classroom and clinical settings proposed by Mr. Ramirez. Julie Driscoll's testimony was not persuasive on the matter of Mr. Ramirez's qualifications or on the conduct of the assessment. Especially since Ms. Driscoll's opinions in this regard were based on her preference for a SIPT certified OT evaluator when there is no California state license requirement for SIPT certification for an OT. Despite her criticisms of the assessment tools and methods used.

12. District has met its burden by a preponderance of the evidence that the May 8, 2008 OT assessment was appropriate. Student may not obtain an IEE at District expense.

13. For the reasons set forth above, the District's May 8, 2008 OT assessment of Student was appropriate. District has no duty to provide Student with an IEE. (Factual Findings 2 to 16; Legal Conclusions 1, and 3 to 12.)

ORDER

District's request for relief is granted.

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. The District prevailed on the sole issue presented.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction, within ninety (90) days of receipt.

DATED: February 25, 2009

_____ /s/ _____

STELLA L. OWENS-MURRELL

Administrative Law Judge

Office of Administrative Hearing