

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

In the Matter of:

GARDEN GROVE UNIFIED SCHOOL
DISTRICT,

Petitioner,

OAH NO. N 2005090668

v.

STUDENT.

Respondents;

STUDENT

Petitioner,

OAH NO. N 2006010265

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT,

Respondent

DECISION

James R. Goff, Administrative Law Judge, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on February 1, 2, 3, and May 1, 2, 3, 2006, in Garden Grove, California.

Justin R. Shinnfield, Esq., of the law firm of Atkinson, Andelson, Loya, Ruud & Romo, represented Garden Grove Unified School District (GGUSD or District). Also present at the

hearing on behalf of the District were Gary Lewis, Assistant Superintendent, and Heidi Harvey, Coordinator Special Education.

Andrea Marcus, Esq. of the Law Offices of Andrea Marcus, represented Student at the hearing. Anne M. Zachry, an advocate and paralegal, was also present for Student. Student's Father attended parts of the hearing.

On September 22, 2005, GGUSD filed its request for a due process hearing. On January 12, 2006, Student filed a Request For Due Process & Motion For Consolidation. The parties stipulated that the two requests for due process would be consolidated for hearing. The due process hearing commenced on February 1, 2006, and proceeded as scheduled to February 3, 2006. The hearing on February 3, 2006, was concluded early due to the physical incapacity of counsel for GGUSD. The hearing was continued to March 13, 2006. On March 9, 2006, OAH received a motion to continue the hearing as a result of a death in GGUSD's counsel's family. The matter was continued until May 1, 2 and 3, 2006. Upon the conclusion of testimony, the parties agreed that final written arguments would be filed no later than May 17, 2006. The parties also agreed that the 45 day requirement for the filing of a decision was waived until June 20, 2006.

ISSUES

1. Was GGUSD's March 2004 Multidisciplinary Psychoeducational and Speech and Language assessments appropriate?
2. Did GGUSD assess Student in all areas of suspected disability during the 2003-2004, and 2004-2005, school years?
3. Did GGUSD fail to offer student a free appropriate public education in the least restrictive environment during the 2003-2005 schools years by:
 - a. Failing, at the IEPs held on April 8, 2004, June 11, 2004, September 24, 2004, January 12, 2005 and June 21, 2005, to develop an IEP that was reasonably calculated to render educational benefit through appropriate goals?

- b. Failing, at the IEPs developed on April 6, 2005 and September 7, 2005, to offer Student an appropriate public education in the least restrictive environment?
4. Is Student entitled to compensatory education?
5. Is Student's parent entitled to reimbursement or independent educational evaluations (IEE) in the areas of physical therapy and psychoeducational evaluations?
6. Is Student entitled to an IEE at public expense in the areas of occupational therapy and visual processing?

FACTUAL FINDINGS

1. Student is an 8 year-old, who attends second grade at Monroe Elementary School and attends a Special Day Class (SDC). Student lives with her Father at her grandparents' home in Garden Grove, California. Student is a child with Down syndrome diagnosed at birth. In March, 2003, Student qualified for special education services under the primary handicapping condition of Mental Retardation.

2. Student moved with her Father to Fountain Valley, California, in the fall of 2003. Fountain Valley is within the GGUSD. An IEP was developed for Student in October 2003. She initially was in a general education class at Northcutt Elementary School (Northcutt) with resource support. At Father's request, the IEP team considered placement at Monroe Elementary School's (Monroe) Special Day Class. In February 2004, Student was transferred to Monroe's SDC for kindergarten. At Monroe, Student received Occupational Therapy (OT) through Children's Therapy Center (CTC) for 30 minutes a week in her classroom. She also received speech and language services two times a week for 30 minutes and Adaptive Physical Education (APE) services for 30 minutes each week.

3. On February 23, 2004, Father signed an assessment plan for Student's triennial IEP that was due in April, 2004. The plan provided for assessments in the areas of Academic Performance, Language/Communication Development,

Social/Emotional/Adaptive Behavior, Psychomotor Ability, Health and Development, and Intellectual/Cognitive Ability.

4. The school psychologist at Monroe prepared a Multidisciplinary Psychoeducational Summary Report. She administered the following tests: the Informal Development Assessment, Developmental Test of Visual Motor Integration (VMI), the Dynamic Indicators of Early Basic Literacy Skills (DIBELS), Vineland Adaptive Behavior Scales (VABS) – Classroom and Interview Editions, Wechsler Preschool and Primary Scale of Intelligence – Third Edition (WPPSI-III), the Woodcock-Johnson Tests of Achievement (WJ – III). In preparing her report the school psychologist also conducted interviews and made observations. Her testing indicated that Student’s performance was in the delayed range and Student rated at below the first percentile. She noted in her report that Student had a history of engaging in some noncompliant, stubborn, and oppositional behavior both in Oregon and at Northcutt Elementary. Part of her report was based on scales and interviews of Father and Student’s teacher at Monroe, Karen Swaboda (Swaboda). Father’s input tended to rate Student higher than the report from the teacher. The report indicated that Student still met the eligibility criteria for Mental Retardation.

5. As part of the assessment for the triennial IEP, the speech and language pathologist (SLP) at Monroe prepared a Speech and Language Report for Student on March 4, 2004. Her testing reflected that the six year, four month old Student scored in an area between an age equivalent of two years, nine months to four years. Student was in the bottom 1-2 percent of the children her age. In her observations, the SLP noted “some refusal behavior.” The SLP indicated that Student’s performance was “within expectancy for developmental age.” Student was found to have a very short attention span. The SLP noted that Student’s level of mental retardation affected her ability to learn to process language. Her pace of learning would be slower than typical peers. SLP recommended additional goals and objectives for Student: (1) ability to quietly attend to, comprehend and complete 1 and 2- step typical classroom directions; (2) ability to consistently and reliably answer

yes/no and who, what, where questions; and (3) ability to request, inform and comment using appropriate 3 to 4-word utterances. When Student began school at Monroe her attention span was one to five minutes but had improved to 15 minutes. Student performed better in a small group environment showing fewer refusal behaviors.

6. Student's triennial IEP was held on April 8, 2004. Father attended the IEP meeting. He acknowledged that he had received a full explanation of the procedural safeguards that he participated in the development of the IEP, that he had received and reviewed the evaluation reports, and, that he agreed to all parts of the IEP. The IEP provided for SDC at Monroe in the mild to moderate class. It provided for general education except for 19 percent of the school day. It provided for Designated Instruction & Services (DIS) of 45 minutes one time a week of Speech/Language, Adaptive Physical Education (APE) of a minimum of 30 minutes per week, and Occupational Therapy (OT) of one hour a week during school days and summer without holiday breaks. The OT was to be provided by CTC. Only the "yes/no and who, what, where questions" goal was added to the IEP of the three goals recommended by the SLP.

7. Father is credited with being very involved with Student's educational program such that he charted her progress, maintains a log that he received from the SDC teacher to monitor Student's daily progress. He often took Student to school or picked her up from school. Father acted as an aide in class for Student until the regular aide arrived. He volunteered in Student's class every other Friday. Father prepared a year end slide show for Student's class. He maintained regular contacts with Ms. Swaboda, the speech and language pathologist and the school principal. When the family moved within GGUSD, Father obtained an inter-district transfer so that Student would not have to change schools. Father felt that Student was making educational progress at Monroe with Ms. Swaboda as her teacher. He pointed to Student's report cards as demonstrating that progress. He praised Ms. Swaboda for her efforts in helping to educate Student. He obtained Ms. Swaboda's assistance in drafting goals for Student that complied with state standards. He

regularly requested IEP meetings to discuss Student's goals, objectives, and services. After the triennial IEP, there were five additional IEPs or addenda to previous IEPs, many of which were requested by Father. At these meetings Father raised concerns that Student needed more mainstreaming, more aggressive goals, more aide time, a one on one aide, additional OT, PT, and a slant board to help Student with her writing. Father obtained an evaluation from Pediatric Therapy Services (PTS). He invited Sharon Grady from PTS to present to the IEP team physical therapy goals drafted from her observations of Student during evaluation.

8. On April 6, 2005, Student's annual IEP was conducted. Father praised Ms. Swaboda and other members of the IEP team. From this IEP, Student continued in first grade at Monroe in the SDC-mild/moderate class. She received 60 minutes of speech/language service once a week. Her APE was twice a week for 30 minutes. An aide was assigned to her for 3.5 hours at school. She received 60 minutes of PT at the clinic once a week. Her OT with CTC changed in September to 50 minutes twice a week at school. Goals were adopted, many of which were prepared by Ms. Swaboda and Father, in accordance with state standards. The occupational therapist working with Student expressed concern regarding Student's visual motor skills. Father indicated that he would follow-up with a pediatric ophthalmologist. Father agreed to the IEP.

9. On June 1, 2005, Student, through her advocate, advised GGUSD by letter that Father disagreed with the psychoeducational assessment of Student conducted in March 2004. Father requested an independent educational evaluation (IEE), at public expense. Father recommended Dr. Robert Patterson, and agreed to waive the reporting time to accommodate Dr. Patterson's schedule. The letter requested an assessment of Student's visual processing abilities. It also purported to revoke Father's consent to the April 6, 2005 IEP regarding OT services.

10. On September 7, 2005, an addendum IEP meeting was held. Father was accompanied by Student's advocate. Father expressed concern with Student's progress in school. Father passed out folders which contained proposed new goals for Student.

Advocate advised that Father would be seeking a due process hearing. Father requested that the April 2005, IEP goals be rewritten before the next meeting. Father advised the IEP team that he had obtained a comprehensive evaluation from Dr. Robert Patterson. His report was expected within weeks. Father complimented the work done by the speech and language pathologist. When Dr. Patterson's report was completed another meeting would be held. Following the IEP meeting on September 12, 2005, counsel for Student sent a letter to GGUSD's counsel expressing that Father did not agree with all of the IEP.

11. Dr. Patterson conducted his evaluation in August 2005. He was qualified to administer the tests he performed. There were multiple tests administered. They were in Student's primary language. The tests were not discriminatory in any manner. The tests were validated for the specific purpose for which they were used. The testing was tailored to assess specific areas of educational need. Student was assessed in all areas of suspected disability. His report was not provided to GGUSD prior to the due process hearing. For the report, Dr. Patterson reviewed the prior reports and testing of Student. Since he was asked by Father not to conduct a classroom observation or to interview any of Student's teachers, his observation was limited to the testing environment. It was his usual practice to conduct an observation of Student when performing an evaluation. In his evaluation he administered the Kaufmann Assessment Battery for Children-2nd Revision (KABC-II); the Sattler Conservation Tasks; the Peabody Individual Achievement Test-Revised (PIAT-R); the Woodcock-Johnson Psycho-Educational Test Battery-Third Revision (WJ-III) Tests of Achievement, particularly the Academic Knowledge Cluster; the Beery Visual Perception Test; the Beery Buktenica Development Test of Visual Motor Integration; the Conners' Parent Rating Scale-Revised: Long Form; the Adaptive Behavior Inventory (ABI); and the Adaptive Behavior Scale-School 2nd Edition of the AAMR Series (ABS-S:2).

12. His report was critical of the school psychologist's administration of the DIBELS, and the Woodcock-Johnson Psycho-Educational Test Battery-Third Revision (WJ-Tests of Achievement Functioning, which he felt was unreliable for young children or

children who score low. He felt the GGUSD's testing provided an unrealistic evaluation of Student's actual academic skills. He noted that the OT testing reflected difficulties with visual perception. Dr. Patterson observed that Father was regularly charting Student's progress in school. He received a lot of information about what was occurring at school from Student's Father. Dr. Patterson confirmed that Student when frustrated can become uncooperative.

13. In his testing Dr. Patterson noted that Student demonstrated a failure in visual conceptualization. A pattern in the testing indicated a problem with visualization. Student did perform better where she could remember items that she had seen earlier. From his testing he could not verify that Student knew seven letter sounds. In administering the Beery Visual Perception Test, the Motor Coordination Task of the Beery and the Beery Buktenica Developmental Test of Visual Motor Integration Dr. Patterson concluded that Student was performing below past testing in regard to fine motor skills and might need more therapy. In many areas Student's testing placed her in the first percentile or lower. Dr. Patterson found that Student was not able to perform on some tasks to the level indicated by Father. He concluded that Student was able to learn but required high redundancy. He noted that Student's visual perception and visual motor coordination were significantly delayed. He recommended a Developmental Optometrist to address a perceived visual tracking problem.

14. Dr. Patterson recommended a highly structured highly redundant method of teaching. Student needed to learn the language necessary to be successful in interacting with peers. Another recommendation was a functional analysis to control her noncompliance behaviors. Finally, Dr. Patterson recommended that GGUSD provide Father with education on the schedules of development of children with Down syndrome. Dr. Patterson was unsuccessful in his attempts to explain to Father, Student's expected slow but steady learning capacity. Dr. Patterson indicated that Student could be successful in the SDC learning environment provided by GGUSD. Father disagreed with the recommendation

that Student attend an SDC. Dr. Patterson noted the discrepancy between his testing scores and those of the GGUSD's school psychologist. He indicated that when he tested Student that he felt she might be aware that something was going on and did not perform as well. She might also be showing signs of regression. He could not offer an opinion on whether Student had progressed educationally based on his testing and Student's existing records.

15. Ms. Swaboda was Student's teacher in SDC, since Student transferred to Monroe from Northcutt Elementary. When Student arrived she was nonverbal, did not transition and tested at pre-kindergarten levels. Currently, Student is verbal and transitions with aid but without behavior problems. Ms. Swaboda provided Father daily with a communication log, and progress reports; she had parent teacher conferences; she talked to Father every other Friday when he was in the classroom; and she consulted with Father in drafting appropriate goals for Student's IEPs on weekends and during the summer. Ms. Swaboda conducted her own informal assessments of Student and maintained a grade book of Student's progress. She had three years of notes regarding Student's progress in her class. Although she knew that Student could not meet state standards, she agreed to help Father draft new goals that reflected state standards because she felt that Student should have an opportunity to reach for those limits. Ms. Swaboda modified the goals in her classroom so that Student could make progress without feeling overwhelmed by the goals. When Student's annual IEP was held in 2005, Ms. Swaboda entered the progress reports for the previous year in the April 8, 2004, IEP and provided a copy to Father. Both Ms. Swaboda and Father provided information on Student for Dr. Patterson's testing. Ms. Swaboda's ratings of Student were uniformly lower than Father's ratings.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. IDEA, the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and the concomitant California special education programs (Ed. Code, § 56000 et

seq.) were enacted to make public education available to children with disabilities and other exceptional needs. Under IDEA, a state school district must provide a free and appropriate public education (FAPE) to each disabled child. (20 U.S.C. § 1412(1).) FAPE consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. (*Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 188-189 [73 L.Ed.2d 690, 102 S.Ct. 3034] (*Rowley*)). The instruction and services must comport with an individually-tailored Individual Education Plan (IEP), which must be developed under strict statutorily-based procedures. (See 20 U.S.C. § 1401(11).) The IEP is a written document detailing the student's current educational level, the short-term and long-term goals of the education plan, the specific services to be offered, and a set of objective criteria for subsequent evaluation. (20 U.S.C. §§ 1401(a)(18), 1412(6), 1414(a)(5); 34 C.F.R. § 300.344.) The IEP must explain the extent to which a child cannot participate in regular education activities. (20 U.S.C. § 1414(d)(1)(A)(iv).)

2. To determine whether a District offered a Student a FAPE, the focus is on the adequacy of the placement the District actually offered, rather than on the placement preferred by the parent. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1314.) Under *Rowley, supra*, 458 U.S. 176, 179 [102 S.Ct. 3034, 73 L.Ed.2d 690], a challenge to an IEP requires resolution of two issues: (1) whether the school district complied with the procedural requirements of IDEA, and (2) whether the challenged IEP was reasonably calculated to enable the child to receive educational benefits. If the school district's program was designed to address Student's unique educational needs, was reasonably calculated to provide her some educational benefit, and comported with her IEP, then the District provided a FAPE, even if Student's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. School districts are also required to provide each special education student with a program in the least restrictive environment, with removal from the regular education environment

occurring only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); Ed. Code § 56031.)

3. To develop an IEP, a potentially eligible child is identified, then assessed by the school district to determine eligibility, and an individualized education program is prepared. (Ed. Code, §§ 56301, subd. (a), 56320, subd. (f).) A district's evaluation is held to a standard provided in the statute of "reasonableness." (*Rowley*, 458 U.S. at 205-207.) A District is required to assess a Student in all areas related to a suspected disability. (Ed. Code, § 56320, subd. (f).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

4. Assessments must be conducted by individuals who are both "knowledgeable of the student's disability" and "competent to perform the assessment, as determined by the school district, county office, or special education local plan area." (Ed. Code §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(B)(ii).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(2), (3); Ed. Code § 56320, subd. (a), (b).)

5. When a parent disagrees with an assessment obtained by the public educational agency, the parent has the right to an independent educational evaluation (IEE) from qualified specialists at public expense unless the educational agency is able to demonstrate at a due process hearing that its assessment was appropriate. (Ed. Code § 56329, subd. (b).)

6. Whether one considers either the procedural or substantive requirements of the IDEA. The law requires only that the IEP in place “be reasonably calculated to confer a meaningful educational benefit on the child.” (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The Ninth Circuit has directed courts not to “judge an [IEP] in hindsight; [but] rather . . . look to the [IEP’s] goals and goal achieving methods at the time the plan was implemented and ask whether these methods were reasonably calculated to confer [the child] with a meaningful benefit.” (See *Pitchford v. Salem-Keizer School District No. 24J* (2001 D.O.) 155 F. Supp.2d 1213, 1234; see also, *T.R. v. Kingwood Township Board of Education* (3rd Cir. 2000) 205 F.3d 572, 577.) The evidence must establish an objective indication that the child is likely to make progress. The evidence of progress or lack thereof must be viewed in light of the limitations imposed by the child’s disability. (*Walczak v. Florida Union Free School District* (2nd Cir. 1998) 142 F.3d 119, 130.) In looking to the substantive requirements of IDEA, it must be determined whether the proposed IEP was reasonably calculated to provide Student with a meaningful educational benefit.

7. A prerequisite to a claim for compensatory education is the establishment that Student was denied FAPE. Both reimbursement and compensatory education issues are equitable issues requiring a balancing of the behaviors of both parties.

DETERMINATION OF ISSUES

WAS GGUSD’S MARCH 2004 MULTIDISCIPLINARY PSYCHOEDUCATIONAL AND SPEECH AND LANGUAGE ASSESSMENTS APPROPRIATE?

8. Based on Factual Findings 1, through 15 and Legal Conclusions 3, 4, and 5, the District’s assessments were appropriate. The school psychologist and speech and language pathologist, who conducted the March 2004, psychoeducational and speech and language assessments were fully qualified with distinguished records. The testing was done according to the applicable manuals. The tests administered were designed to establish the results sought by the testing.

9. However, there was persuasive evidence that the psychoeducational testing was not adequate. Dr. Patterson indicated best professional practices standards applicable to this kind of testing would not permit GGUSD to test Student's IQ using tests that rely heavily on language abilities when Student was so obviously language impacted. Similarly, he related that best practices would not permit a report that failed to provide more insight into Student's strengths and weaknesses for the IEP team. The GGUSD psychoeducational assessment was inappropriate in regard to best practices.¹ Based on Factual Findings 1 through 14 and Legal Conclusions 3, 4, and 5 the assessment conducted by Dr. Patterson was in accordance with state law and was appropriate. Therefore, Student's Father is entitled to reimbursement for the assessment by Dr. Patterson.

10. Student failed to provide any evidence that Student ever disagreed with the speech and language assessment. In the absence of notice to the District, Student is not entitled to an IEE, or reimbursement. This conclusion is supported by Factual Findings 1 through 15, and Legal Conclusions 3, 4, and 5.

DID GGUSD ASSESS STUDENT IN ALL AREAS OF SUSPECTED DISABILITY DURING THE 2003-2004, AND 2004-2005, SCHOOL YEARS?

11. Student contends that GGUSD failed to properly assess Student for OT, visual processing, and PT and that they were suspected areas of disability. In a report by GUSD's OT expert and in Dr. Patterson's report there was expressed a discrepancy in visual motor skills. Based on these findings, and the failure to assess in this area, an OT

¹ Best practices refers to widely accepted professional standards applicable to a particular field. They recognize appropriate levels of performance. See, National Center On Educational Outcomes, Report: Universal Design Applied To Large Scale Assessments; National Governors Association Center For Best Practices.

reassessment is warranted. This conclusion is supported by Factual Findings 1 through 15, and Legal Conclusions 3, 4, and 5.

12. Student contends that physical therapy was an area of suspected disability that GGUSD failed to assess. Student seeks reimbursement for a physical therapy (PT) evaluation that Father privately contracted for in 2004. Father of Student obtained his own evaluation without notice to GGUSD. Under the circumstances, Student failed to establish by a preponderance of the evidence that she was entitled to reimbursement for the PT evaluation. This conclusion is supported by Factual Findings 1 through 15, and Legal Conclusions 3, 4, and 5.

13. Student seeks an assessment in the area of visual processing. Dr. Patterson recommended that Student be seen by a developmental optometrist in his report. The occupational therapist indicated that Student might need a vision processing assessment. The evidence supports the need for an assessment in this area. This conclusion is supported by Factual Findings 8 through 15 and Legal Conclusions 3, 4, and 5.

14. Student has not proven that she requested and was denied an assessment in OT, PT or visual processing. GGUSD has not assessed in either PT or visual processing, but adopted Student's privately funded PT assessment. Therefore, while an assessment is needed in the areas of OT and visual processing, as they are suspected areas of disability, Student is not entitled to an IEE in these areas. Similarly, Student is not entitled to reimbursement for her PT assessment. This conclusion is supported by Factual Findings 8 through 15 and Legal Conclusions 3, 4, and 5.

Did GGUSD fail to offer student a free appropriate public education in the least restrictive environment during the 2003-2005 schools years by failing to develop an IEP that was reasonably calculated to render educational benefit through appropriate goals and in the least restrictive environment?

15. Based on Factual Findings 1 through 15 and Legal Conclusions 1, 2, 6 and 7, the five IEPs of April 8, 2004, June 11, 2004, September 24, 2004, January 12, 2005 and June

21, 2005, raised by Student were appropriate as the goals and objectives were reasonably calculated to provide an educational benefit, which was provided.

16. Based on Factual Findings 1 through 15 and Legal Conclusion 1, 2, 6 and 7, although Student's progress at school was difficult to identify, considering the limitations of Student's disability, the IEPs have allowed Student to make reasonable progress. Dr. Patterson testified that Student's progress would be slow and gradual and could not be expected to appear year to year. Dr. Patterson opined that the SDC was an appropriate venue for Student to be educated and that she could learn in that environment with appropriate goals and objectives. Some deference can be accorded to the professional opinions of those who participate daily with Student. The teachers uniformly pointed to Student's success. Student offers no evidence that Student has not made any educational progress. The uncontradicted evidence was that Father maintained a chart of Student's progress, and that Ms. Swaboda provided him with a copy of Student's progress reports. Father had ample evidence of Student's progress. Teachers testified to progress in Student's attention span, her diminished oppositional behaviors, improvement in communication, physical dexterity, and participation. A preponderance of the evidence established that the IEPs, including goals and objectives, did offer Student FAPE, as demonstrated by her educational progress, in the least restrictive environment.

17. Student failed to present any evidence of a basis on which to establish compensatory educational services. Furthermore, Student was not denied FAPE. This conclusion is supported by Factual Findings 1-15, and Conclusion 7.

ORDER

1. GGUSD is ordered to reimburse Student for the psychoeducational report by Dr. Patterson, within 30 days of receipt of proof of the amount of the fees for the report and that it was paid.

2. GGUSD is ordered to conduct an assessment in the areas of OT and visual processing, within 30 days of this decision.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Student prevailed on the issue of the IEE at public expense for the psychoeducational report of Dr. Patterson and the need for an OT and visual processing assessment. GGUSD prevailed on all issues dealing with the provision of FAPE to Student.

RIGHT TO APPEAL THIS DECISION

The parties to this 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 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: June 20, 2006



JAMES R. GOFF

Administrative Law Judge

Office of Administrative Hearings