

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

In the Matter of:

STUDENT,

Petitioner,

v.

PALOS VERDES PENINSULA UNIFIED
SCHOOL DISTRICT,

Respondents.

OAH CASE NO. N 2007040436

DECISION

Administrative Law Judge (ALJ) Glynda B. Gomez, Office of Administrative Hearings, Special Education Division (OAH), heard the above-captioned matter in Palos Verdes Estates, California on October 1, 2, 3, 4, 5, and 22, 2007. Palos Verdes Peninsula Unified School District (District) was represented by Patrick J. Balucan, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo. Catherine Boyd, program specialist for the District, was also present each day of the hearing.

Student (Student) was represented by Andrea M. Tytell, Attorney at Law, of the Law Offices of Andrea M. Tytell. Student's parents were present each day of the hearing.

The Student's Due Process Complaint was filed on April 16, 2007. On May 21, 2007, a joint request for continuance was granted. The record remained open until November 19, 2007 for the submission of closing briefs. Briefs were submitted and the record was closed on November 19, 2007.

ISSUES

1. Did the District fail to assess Student in the area of Obsessive Compulsive Disorder?

2. Did the District's offer of placement contained in the October 17, 2005 and January 25, 2006 Individualized Education Program (IEP) constitute a Free Appropriate Public Education (FAPE)?

CONTENTIONS

Student contends that the placement offer contained in the October 17, 2005 and January 25, 2006 IEPs does not constitute a FAPE. Student contends that due to the complexity of her medical condition of Pachygeria with Seizure Disorder, Obsessive Compulsive Disorder and learning disabilities, she requires a smaller school setting with extensive daily counseling and other supports to obtain educational benefit. Student also contends that District did not assess her in the area of Obsessive Compulsive Disorder (OCD).¹

District contends that Student was assessed in all areas of disability including Obsessive Compulsive Disorder and that based upon the assessment data, the IEP team made a determination of Student's unique needs. District contends that all of Student's unique needs are addressed by the goals, services and placement package offered. District contends that it has offered a FAPE to Student.

¹ In her closing brief, Student asserted procedural violations including failure to give proper notice of the January 25, 2006 IEP meeting, and deprivation of parental participation at the January 25, 2006 IEP meeting. These assertions were not designated as issues for hearing and are therefore outside the scope of the hearing and this decision. Additionally, the claim that District discriminated against Student was not within the scope of the hearing, was never identified as an issue for hearing and was first raised in Student's closing brief. No evidence was presented to support a claim of discrimination and it will not be addressed by this decision

FACTUAL FINDINGS

JURISDICTION

1. Student is nineteen-year-old woman born on January 16, 1988. Student resides within the boundaries of the District, but has never attended public school within the District. She is eligible for special education and related services under the eligibility categories of specific learning disability (SLD) and other health impairment (OHI). She graduated from Summit View School, a certified non-public agency in June of 2007. Student currently attends Mary Mount College, a private junior college in Palos Verdes, California.

2. Student has been diagnosed with Pachygyria on the left side of her brain. Pachygyria is a congenital brain malformation, which results in a thick, smooth brain surface, which does not conduct or receive adequate, efficient or correct electrical signals resulting in seizures. As a result of Pachygyria and seizures, Student has OCD. Student has also been diagnosed with learning disabilities.

BACKGROUND

3. Student was born in the Netherlands and lived briefly in the United States as a toddler when she attended preschool in Bakersfield, California. Most of her life has been spent overseas due to her father's employment. She attended kindergarten through mid- fourth grade at the International School Bangkok (ISB) in Bangkok, Thailand. Her parents noticed learning problems in the first grade, but were assured by school staff that student would catch up by third grade. By third grade, it was apparent that Student was not progressing academically as well as expected. Student's parents reported that she often came home from school screaming and had emotional tantrums

that scared the household staff. There were no reports of misbehavior in school.²

4. During the middle of fourth grade, Student was moved by her parents to the Rose Marie Academy in Thailand. Unlike ISB, Rose Marie Academy had very small classes and offered a remedial tutorial program. Student experienced her first major seizure on July 1, 1998, during the summer break between fourth and fifth grades, while vacationing at her grandmother's home in Palm Springs, California. The seizure caused temporary paralysis of the right side of her body. Student did not return to school in Thailand. Instead, she underwent months of medical treatment in the United States. Student received a diagnosis of Pachygyria with simple seizure disorder.³ Student was out of school seeking medical treatment for nearly half of the fifth grade. When she returned to Rose Marie Academy the following school year, it was determined by Student's parents and the school, that Student should repeat fifth grade. She completed fifth grade at Rose Marie Academy in 2000.

5. Student's mother⁴ and her neuropsychologist, Nancy Markel⁵, testified to

² By all reports, Student has always been well-behaved and cooperative in a school setting

³ Student was given Dilantin and Tegretol to control her seizures. In 2002, her medication was changed to Lamictol to better control breakthrough seizures. In 2005, she was given Prozac and Zoloft to control her OCD

⁴ Student's mother has a Bachelor of Arts in Public Administration and a Bachelor of Science in Nursing

⁵ Nancy Ellen Markel, Ph.D. is a neuropsychologist. She received a Doctor of Philosophy with a clinical subspecialty in Professional Psychology from the United States International University and a Master of Arts in Clinical Psychology from United States

what Dr. Markel described as a “psychotic break” in the summer of 2000. Student thought her father was trying to poison her food. This escalated to fears that others were trying to kill her and an inability to leave her mother's side. Dr. Markel later attributed the “psychotic break” to stress Student experienced from an intense schedule of remedial summer academic programs. At that time, she was given Risperdal, an anti-psychotic medication and increased dosage of Tegretol. Dr. Markel did not inform the IEP team of the psychotic break because she did not believe that the team needed to know of the incidents. Dr. Markel opined that Student needed an individualized program, with structure and repetition in a small setting to address her needs in fluency, speech and language and occupational therapy. Markel also opined that Student would need daily counseling.

6. Student’s father received an employment transfer to Jakarta, Indonesia in 2000. Student completed sixth⁶ and seventh grades at Jakarta International School in Jakarta Indonesia (JIS). When Student was not accepted by the JIS middle school because of her disabilities, her parents arranged for her to attend North Jakarta International School (NJIS). She received private counseling, math tutoring and speech and language therapy outside of the school setting through eighth grade. Her parents sent her to boarding school at the Oakland School, in Keswick Virginia during the summer between eighth and ninth grade on a trial basis. The Oakland School specializes in the education of children with learning disabilities through the ninth grade. The Oakland School was a small school with 100 students, 36 of which were boarders.

International University. Dr. Markel began treating and consulting with Student in 1998

⁶ Student’s parents provided her with a one-to-one aide/companion for a portion of the sixth grade

Student was successful in the trial summer program, so Student completed her ninth grade year at Oakland School. Student progressed well academically. She had some success learning math despite her prior math teacher advising parents that he did not believe she would ever be capable of learning math. Student completed ninth grade, the Oakland school's final grade.

7. In the summer of 2004, Student's family moved back to the United States to a home they owned in Rolling Hills, California within the Palos Verdes Peninsula School District. In the fall of 2004, rather than attend public school, Student enrolled in Summit View School, a non-public agency (NPA) in Culver City, California. In May of 2005, her parents requested that she be assessed by the District to determine eligibility for special education and for possible enrollment in the District. Student continued her attendance at Summit View School from 2004-2007 completing the tenth, eleventh and twelfth grades and graduated in 2007. Student filed her Due Process Complaint on April 15, 2007.

DID THE DISTRICT FAIL TO ASSESS STUDENT IN THE AREA OF OBSESSIVE COMPULSIVE DISORDER?

8. Assessments must be conducted by individuals who are knowledgeable about the Student's disability and competent to perform the assessment. The 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; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible. The assessors must use a variety of assessment tools including information provided by the parent.

9. After Student's parents consented to assessment in May 2005, Student underwent a series of assessments in preparation for the October 17, 2005 IEP. School Psychologist Linelle Mitchell conducted a psycho-educational assessment. Mitchell has a

Bachelor of Science Degree and Masters Degrees in Special Education, Educational Psychology and Counseling/Guidance. She is a credentialed physical education teacher and has a Special Education Credential and Pupil Services Counseling credential. She has been a school psychologist employed by District for 19 years. She taught adaptive Physical Education for one year and was a resource specialist teacher for four years in Portland, Oregon.

10. The psychoeducational evaluation was conducted over several days. The assessment included an initial interview with parents on June 1, 2005, and an observation and consultation with Student's teachers. Mitchell also forwarded teacher report forms to the Summit View teachers on June 1, 2005. Mitchell noted Student's medical history and reviewed Student's records which included an August 1998 sensorimotor evaluation from Stephen E. Chase, a 1998 assessment by Dr. Blaine Bourgeois of the Epilepsy Program at Children's Hospital in Boston, Massachusetts, 1998 and 2002 neuropsychological/ cognitive evaluations by nueropsychologist Nancy Markel, a July 2000 occupational therapy evaluation by occupational therapist Mary J. Kavar, and an April 2005 audiology report from clinical audiologist Carol J. Atkins.⁷ Mitchell noted a history of Pachygyria, seizure disorder, anxiety, learning disorder, sensorimotor and neurological impairments. She also reviewed the Summit View private school IEP.

11. Mitchell interviewed Student on June 21, 2005 and administered the Weschsler Adult Intelligence Scale (WAIS III). The WAIS III is used to assess the general

⁷ Mitchell noted that the reports referred to a speech and language evaluation conducted by Joanne Hein in June 2002 and a second speech and language evaluation conducted by speech and language pathologist Marjan Rafeli in 2005. The Hein and Rafeli reports are referenced in the reports that Mitchell reviewed, but the actual Hein and Rafeli reports of evaluations were not provided to Mitchell for review

thinking and reasoning skills of individuals aged 16 to 89 years. Student scored within the average range with a Full Scale Intelligence Quotient of 91. The WAIS III also measures verbal and performance abilities. Student scored within the average range on both verbal and non-verbal measures. The Working Memory Index of the WAIS III provides information regarding an individual's ability to attend to verbally presented information, to process information in memory and then to formulate a response. Student scored below average in this area. Mitchell opined that Student might experience difficulty holding information in memory to perform specific tasks. Additionally, difficulties with working memory may make the processing of complex information more time-consuming for Student and drain her mental energies more quickly. The WAIS III Processing Speed Index (PSI) provides a measure of an individual's ability to process simple routine visual information quickly and efficiently and to quickly perform tasks based upon that information. Student performed in the average range on the PSI. According to Mitchell, the WAIS III showed Student to have average cognitive ability, verbal comprehension, and perceptual organization, but a weakness in her working memory.

12. To gain additional information concerning Student's cognitive functions, Mitchell administered the Test of Nonverbal Intelligence, Third Edition (TONI-3) on September 5, 2005 and the Kaufman Brief Intelligence Test (KBIT) on September 12, 2005. Student received a score of 92, within the average range on the TONI-3 and a score of 87, within the low-average range on the KBIT.

13. The Wechsler Individual Achievement Test II (WIAT II) was administered by Mitchell on September 12, 2005.⁸ The WIAT II is a comprehensive test for assessing

⁸ The WIAT II though administered by Mitchell was analyzed by a Palos Verdes High School RSP teacher. The teacher's identity is not in evidence

academic skills. Student's overall reading skills were within the average range, with reading comprehension in the low average range. Student's overall mathematics skills fell in the below average range, with math operations scores in the well below average range. Student's writing score was within the average range.

14. Also on September 12, 2005, Student completed the Behavior Assessment for Children-Self Report of Personality (BASC). The BASC report yields composite scores in the areas of School Maladjustment, Clinical Maladjustment, Personal Adjustment and an overall composite score. The BASC scores did not provide any at-risk or clinically significant scores.⁹

15. The Achenbach Behavior Rating Scales were completed by Student, her parents and her teachers. The scales rate eight behavior categories: withdrawn, somatic complaints, anxious/depressed, social problems, thought problems, attention problems, delinquent behavior and aggressive behavior. Student completed the Achenbach Behavior Rating Scales Youth Self-Report (YSR) on September 12, 2005. There were no clinically significant or borderline behavior scales reported in the Achenbach YSR. Mitchell reported that Student did not report any illnesses, disabilities, concerns or problems. Student indicated that she believed she was functioning above average in all of her academic subjects and that she got along with others on an average basis.

16. Student's teachers completed the teacher report and progress reports. Trevor Park, Student's Algebra teacher indicated that Student was hard working, friendly, prompt and advocated for herself fairly well. His greatest concern was Student's low, but

⁹ The BASC L index is a measure of a child's tendency to respond in a socially desirable manner instead of truthfully. Nine of Student's responses caused Student's L index to be in the caution or extreme caution range. Accordingly the results must be used with caution

improving, self-esteem. Student's English teacher, Mr. Oshiro, stated that he considered Student to be self-motivated and eager to learn. He was most concerned about Student's interaction with age level peers. Mr. Garcia, the Spanish teacher indicated that Student was a very hard worker and he had no concerns about Student. Both Ms. Davies, the Biology teacher and Tiffany Sullivan, the School Counselor provided responses which indicated clinically significant behavior associated with anxiety/depression and withdrawal/depression. Davies indicated that Student was a hard working, articulate student. She expressed concerns about Student's social awareness, shyness and withdrawn manners causing isolation. Ms. Sullivan opined that Student's complete academic success and life preparation were hindered by her extreme anxiety and fearful thoughts. Sullivan indicated that Student responded well to a small academic learning environment and consistent counseling.

17. Student's mother completed the Achenbach Child Behavior Checklist. The results of her responses indicated clinically significant behavior scales in somatic complaints, social problems, anxious/depression, withdrawal/depression and thought problems. Student's mother stated that Student gets along well with family members, but has difficulty getting along with peers. Student's mother described her as struggling with anxiety and low self-esteem. She reported that Student had difficulties socially and making friends. She indicated that Student becomes very anxious in unfamiliar circumstances, has been struggling with a recent unexpected death in the family, has been distraught and started to show OCD tendencies. Mitchell conducted an interview with both of Student's parents on June 21, 2005.

18. Mitchell observed Student in her history class at Summit View School on October 6, 2005. She observed Student to be quiet for most of the class, but she interacted with two other students in her row while developing a group response to the teacher's questions. She smiled and laughed a few times during the class. She frequently

held her hands close to her face and picked at her lower lip throughout the class.

19. Mitchell reviewed Student's grades and noted that Student received all "A" or higher grades in the second semester of the 2004-2005 school year at Summit View.

20. At the October 17, 2005 IEP meeting, Student's parents requested that additional assessments be performed in the areas of reading, mathematics, writing fluency, asperger's syndrome/social skills, assistive technology and orientation and mobility. No specific request was ever made for assessment in the area of OCD. Student's parents did note that Student was diagnosed with OCD in July of 2005 by a Dr. Caplin, but did not provide a report or any analysis from Caplin about the diagnosis.

21. The meeting was continued to January 25, 2006 for the additional assessments requested by Student's parents. A navigation and orientation assessment was conducted by Physical Therapist Jan Schlesinger and a pediatric behavioral assessment related to orientation and mobility by Dr. Janice Carter-Lourensz. Leith Emery, the District RSP teacher conducted additional academic testing. Mitchell administered the Gilliam Autism Rating Scale (GARS), Asberger's Syndrome Diagnostic Scale (ASDS), Vineland II Adaptive Behavior Scales, Survey Interview Form and Childhood Autism Rating Scale (CARS), conducted an additional classroom observation of Student and consulted with the Director of Special Education from Summit View School.

22. The Vineland Adaptive Scales were given to Student's parents to complete. The Vineland Adaptive Scales indicated that Student performed in the below average range in communication, daily living/self-help skills and socialization. The overall score placed her in the elevated level of the maladaptive behavior index. The specific instances contributing to the score were that, according to her parents, Student preferred to be alone, was overly anxious or nervous, had poor eye contact, avoided social interactions and lacked energy or interest in life. Student scored within the average range in

externalizing behaviors and showed no signs of disruptive or aggressive behaviors.¹⁰

23. Mitchell conducted an additional observation of Student on November 10, 2005 in her reading class at Summit View School. There she observed Student reading aloud and responding to the instructor. Throughout the class, Student picked at her lower lip. Mitchell also met with Sheila Zaft, the Director of Special Education at Summit View to discuss Student's needs and status. Zaft advised that Student had two best friends, was the Student Body Vice-President and worked well in groups.

24. The Gillian Autism Rating (GARS) is used for the assessment of individuals aged 3 through 22 to diagnose autism. The GARS subtests are based upon the definition of autism adopted by the Autism Society of America and the Diagnostic and Statistical Manual of Mental Disorders: Fourth Edition (DSM-IV). The subtests include: stereotyped behaviors, communication, social interaction, and developmental. The standard scores for each subcategory contribute to an autism quotient. The GARS was completed by Student's parents, her teachers and her school counselor. The GARS results indicated low probability of autism.

25. The Childhood Autism Rating Scale (CARS) is a fifteen item behavior rating scale developed to identify children with autism and to distinguish them from developmentally handicapped children without autism syndrome. The fifteen items are: relating to people, imitation, emotional response, body use, object use, adaption to change, visual response, listening response, taste, smell, touch response and use, fear or

¹⁰ Mitchell noted that the Vineland-II results should be reviewed with caution and consideration should be given to the fact that Student spent the majority of her life in sheltered situations. The family lived in secure compounds with little opportunity to venture out independently and were provided with domestic staff for most household tasks

nervousness, verbal communication, nonverbal communication, activity level, level and consistency of intellectual response, and general impressions. The CARS was completed by Student's parents on December 1, 2005. The results indicated that Student did not meet the criteria for autism.¹¹

26. The Asperger's Syndrome Diagnostic Scale (ASDS) is a standardized test instrument designed to assist with the diagnosis of Asperger's Syndrome. By comparing an individual's Asperger's Syndrome Quotient (ASQ) with the normative sample, composed entirely of individuals diagnosed as having Asperger's Syndrome, a probability of Asperger's Syndrome is established. Student's parents and the Summit View School counselor completed the ASDS. The scores from Student's counselor indicated that Asperger's was very unlikely.¹² However, the scores from Student's parents indicated that a diagnosis of Asperger's Syndrome was likely.¹³ After analysis, Mitchell concluded that

¹¹ Parental comments on the CARS indicated that Student had difficulties with new situations, physical contact other than with her mother, preferred younger companions, anxiety about change, eye contact avoidance and sensitivity to noise

¹² Student's counselor, Tiffany Sullivan, noted that she did not believe that Student exhibited enough, if any traits to be considered on the Asperger's Diagnostic Scale

¹³ Parents indicated that they began seeing differences in Student's behaviors in kindergarten. Unusual behaviors are not observed in all settings. Parents indicated that the behaviors most affected were social behavior, anxieties and self-confidence. They also indicated that her rituals impede her taking part in school-group activities and slow her down. They acknowledged that her behaviors result from her Pachygyria and seizure disorder

the assessment data did not support a diagnosis of Asperger's Syndrome. Although some characteristics of Asperger's were noted by her parents, most of those characteristics had been accounted for by Student's psychologists as emanating from her Pachygyria and seizure disorder.

27. Mitchell's analysis revealed that Student was of average intelligence with learning difficulties, sensorimotor and neurological impairments related to her Pachygyria and seizures. She opined that that Student's Pachygyria and seizure disorder affected her processing, sensorimotor and social emotional skills including anxiety, social integration and self-confidence. Mitchell noted weaknesses in auditory sequential memory (working memory), mathematics computation, mathematics reasoning and reading comprehension. Mitchell also observed Student in classroom settings and solicited information from Student's teachers and counselor at Summit View to determine if the OCD was a functional disability. There were no indications that the OCD was affecting Student in the classroom or affecting her ability to access the curriculum. Mitchell concluded that Student was more dependent and anxious in the home environment than in the school environment. As Mitchell noted, Student's grades were all "As."

28. Mitchell utilized observation, interviews, WAIS III, TONI-3, KBIT and WIAT II, Achenbach scales, progress reports, GARS, CARS, ASDS, Vineland II and the BASC self report to gather information about Student's ability to access the curriculum. Based upon her observations and the totality of the information derived from the various test and instruments administered, Mitchell was able to ascertain the functional level of Student's OCD. Based upon her education, training and experience, Mitchell was competent to perform the assessment. She was knowledgeable about the Student's disability, the tests and assessment materials. The materials were validated for the purposes for which they were used and were selected and administered so as not to be racially, culturally or sexually discriminatory. The tests were administered in Student's primary language of

English. Mitchell also utilized a variety of tools including information provided by the parents, Student and teachers. Student was assessed in all areas of suspected disability including OCD.

DID THE DISTRICT'S OFFER OF PLACEMENT CONTAINED IN THE OCTOBER 17, 2006 AND JANUARY 25, 2006 INDIVIDUALIZED EDUCATION PROGRAM (IEP) CONSTITUTE A FAPE?

29. In determining the adequacy of a special education placement, the focus is on the adequacy of the placement offered and not on the placement preferred by the parent. A placement that is designed to meet the unique needs of the student, provides some educational benefit, comports with the Student's IEP, and is provided in the least restrictive environment provides FAPE.

IDENTIFICATION OF UNIQUE NEEDS

30. In addition to the battery of assessments conducted by Mitchell, Student underwent a series of assessments conducted by other personnel.

31. The school nurse, Kathy Barry conducted a health screening consisting of a medical history, height, weight, vision and hearing screenings on September 19, 2005.

32. Carolyn L. Hardesty, a Senior Registered Occupational Therapist with the District conducted an occupational therapy educational assessment of Student.¹⁴ She conducted a records review, a Student interview, a teacher interview and a student observation. She administered the Beery-Buktenica Developmental Test of Visual-Motor Integration, The Beery VMI Developmental Test of Visual Perception, The Beery VMI

¹⁴ Hardesty has eleven years of experience as a licensed occupational therapist. She has worked as an OT for the district for nine years. She has a Bachelor of Science degree in Occupational therapy for the University of Southern California

Developmental Test of Motor Coordination, the Bruininks-Oseretsky Test of Motor Proficiency-non standardized and the Motor-Free Visual Perceptual Test-Third Edition. Hardesty noted that Student printed and was not able to write cursively. Also, Student was only able to type with her left hand due to weakness in the right hand. Refined motor movements were difficult with the right hand. Student is left-handed and was able to complete all tasks with the left hand. Hardesty recommended that occupational therapy services be provided to Student on a collaborative model to monitor her progress.

33. Jason Hilkey, Assistive Technology Consultant and President of Pathways Therapy and Assistive Technology conducted an assistive technology assessment. Hilkey assessed her skill level based on reports, observations and informal screening measures.¹⁵ He had Student copy from pre-printed samples, write from dictation and prepare an independent writing sample. He also had student type a writing sample. Hilkey considered the use of several different types of software to assist Student with reading and writing as well as voice recognition software. Student advised Hilkey that she was not interested in utilizing such software. Since she does utilize word processing software for a computer, Hilkey recommended Keytime, a typing skills program. He did not recommend anything more because Student was not motivated to use the technology. According to Hilkey, motivation to use the technology is a large component of the success of assistive technology.

34. Jan Schlesinger, a self-employed licensed physical therapist conducted a mobility assessment of Student to determine if Student had the physical ability to navigate the Palos Verdes High School campus.¹⁶ She noted mild weakness on Student's

¹⁵ Hilkey testified that there are no standard Assistive Technology assessments

¹⁶ Schlesinger received both a bachelor's degree and a master's degree from

right side consistent with hemiparesis. She determined that Student's gait and muscle tone were within normal range. She detected some difficulty with balance coordination and crossing the mid- line, but concluded that Student had no physical impediment that would prevent her from navigating the campus.

35. Barbara McGinty, a licensed speech and language pathologist employed by District conducted a speech and language assessment of Student.¹⁷ She noted an auditory memory problem and a difficulty understanding idioms. She recommended speech and language services once a week for thirty minutes to address a goal with idioms and pragmatic language. She also recommended a social skills group to work on pragmatic language and independent living skills.

36. At the District's request, Dr. Janice Carter-Lourensz, a Harvard trained, licensed medical doctor with a specialty in pediatric psychiatry, conducted a behavioral assessment of Student to determine the extent and effect of her Pachygyria on her ability to navigate Palos Verdes High School. She had been asked to determine whether

Quinnipiac College in occupational therapy

¹⁷ Ms. McGinty has worked for the District for 16 years as a speech and language pathologist. For four year prior to that she worked for Los Angeles County as a speech and language pathologist assigned to Palos Verdes. She has 35 years of experience as a speech and language pathologists. She received a Bachelor of Arts degree in Speech and Language Pathology with a minor in Psychology from San Fernando Valley University (now California State University at Northridge) and a Master of Arts in Speech and Language Pathology with a minor in Audio logy from California State University, Los Angeles. She has a teaching credential and a Certificate of Clinical competence from the American Speech and Hearing Association

Student's specific neurological and health challenges would respond to physical therapy intervention or orientation and mobility supports. She gave an oral presentation of her assessment results at the January 25, 2006 IEP meeting. She reviewed Student's records, previous assessments and performed her own clinical observations. She prepared a report after the January 25, 2006 IEP. Dr. Carter-Lourensz was candid and credible in her testimony. She was knowledgeable and had extensive experience.

37. To Dr. Carter-Lourensz, a major difficulty for Student was that her seizures prevented receipt and retrieval of information. According to Dr. Carter-Lourensz, Student's Pachygyria results in a "smooth brain" on the left side. For the brain to function properly there must be a connection between axons and continued folds in the brain. Student's brain has aberrant connections and does not receive adequate, efficient or correct connections and signals. Student has constant seizure activity. Even on medication, Student experiences break through seizures. As a result, Student has limited ability to use fluid reasoning. Instead, Student is only able to access her crystallized intelligence. Essentially, crystallized intelligence is memorized knowledge. Student is not able to react to novel situations and attempts to fit them into known routines. The stress from novel situations and the lack of ability to adapt to them causes more seizure activity and exacerbation of Student's OCD. Student's OCD results in the need to complete multiple compulsions and rituals. Student has learned to cope with her situation by utilizing routines and rituals. While this has been a coping mechanism in certain situations, in others it has been taken to the extreme resulting in OCD compulsions and rituals which consume inordinate amounts of, energy, time and thought thereby interfering with Student's daily activities.

38. Dr. Carter-Lourensz visited both the Summit View campus and the Palos Verdes High School Campus. When she visited Summit View, the students were gone for the day. She did note that the physical lay out of the Palos Verdes High School campus

was much larger than Summit View and that many of the buildings looked alike. The campus was U-shaped and required Student to be cognizant of her own location on the campus and orient herself to class locations which would initially be difficult for Student.

39. Dr. Carter-Lourensz recommended that Student continue with speech and language therapy, social skills development program, occupational therapy and visual presentation of materials. She also recommended that Student transition from a fully academic program to a merged functional adaptive and practical academic program. She recommended referral to a social skills development program and to the regional center. For navigation of the Palos Verdes High School Campus, Carter-Lourensz recommended implementation of an IEP goal for directional navigation and recall of items and locations. Carter-Lourensz opined that useful strategies might include the use of a large map and photographs. Carter-Lourensz indicated that Student needed continued medical support and social adaptive follow-up

40. Individualized Educational Plan (IEP) meetings were held on October 17, 2005 and January 25, 2006.¹⁸ Parents, Student's neuropsychologist, Nancy Markel and their attorney attended the October 17, 2005 IEP. Other participants were District's Attorney Adam Newman, Leith Emery, Special Education teacher, Kathy Barry, school nurse, Lucille Mitchell, school psychologist, Carolyn Hardesty, Occupational Therapist, Barbara McGinty, Speech and Language Pathologist, Patricia Linclan, a general education

¹⁸ A subsequent annual IEP was held on December 11, 2006. Student's parents, Sheila Zaft, the Summit View School Director of Special Education, Julie Magnuson, a Summit View classroom teacher, Student's attorney, Pat Moore, a District general education teacher, Linelle Mitchell, school psychologist, Catherine Boyd, administrative designee and the District's attorney attended the IEP. Student's progress was discussed and no changes were made to the IEP

teacher and Sheila Zaft, Assistant Director for Summit View School.

41. At the October 17, 2005 IEP meeting, the team discussed Student's present levels of performance. Input was received from all assessors, parents, Dr. Markel and the Summit View School assistant director. From the present levels of performance, it was determined that Student had unique needs in the areas of: math application, reading comprehension, reading, math computation, math reasoning, pragmatics, language, social/emotional, pragmatics, peer interactions, and participation within the classroom environment. The IEP team drafted goals for each of the areas of need.

42. The IEP team reconvened on January 25, 2006 to discuss the results of the additional assessments requested by Student's parents. Student's parents did not attend the January 25, 2006 IEP because neither Markel nor their attorney was available and their attorney had advised them not to attend the IEP alone. Participants were Cathryn Boyd, program specialist, Chris Bowles, administrator, Linelle Mitchell, School Psychologist, Carolyn Hardesty, Occupational Therapist, Barbara McGinty, Speech and Language Pathologist, Jan Schlesinger, Physical Therapist, Janice H. Carter-Lourensa, MD, Stephanie Fry, Special Education leader and Pat Linelow, general education teacher. After discussion of the assessment results, the IEP team added goals in navigation strategies, coping strategies and semantics/pragmatics. The IEP team also added a daily physical navigation provider/companion as an additional service for 20 minutes each day was to assist Student in locating and transitioning between her classes. No other changes were made to the services and placement offered in the October 17, 2005 IEP.

PLACEMENT AND SERVICES

43. The October 17, 2005 and January 25, 2006 IEPs the District offered placement at Palos Verdes High School, on a general education campus. Palos Verdes High School utilized a block schedule which results in students taking 3 classes per day each for 113 minutes. Students took a total of 6 separate classes or blocks. The blocks

alternate, (i.e. on Monday classes 1, 2 and 3 are taken, on Tuesday classes 4, 5 and 6 and on Wednesday 1, 2 and 3 again). Parents expressed concern about Student's ability to navigate the Palos Verdes High School campus. Palos Verdes High School Campus was chosen instead of Palos Verdes Peninsula High School because it was the smaller of the District's high school campuses. There are four RSP classrooms on the campus. If Student needed assistance with classwork she would be permitted to leave class and go to the nearest RSP classroom in addition to her regularly scheduled RSP class. District routinely hand scheduled the classes of students on IEPs. Student's classes would be scheduled to minimize the distance and transitions that Student would need to make each day and to give proximity to RSP classrooms to the extent possible.

44. The District also offered Resource Specialist Services (RSP) services for 113 minutes for 5 periods in each two week period or alternatively, every other day, counseling by the school psychologist for 30 minutes each week, social skills counseling for 45 minutes each week, and speech and language services in a small group setting 30 minutes per week. The offer also included 60 minutes of occupational therapy consultation services per month. The occupational therapy service was to be collaborative and not direct therapy to monitor her right side weakness. District offered the following accommodations and modifications: a student note taker, use of a calculator, preferential assigned seating away from distractions and near the instructor, cues, prompts and reminders of assignments requirements, progress reports for home school communication, instructions repeated and rephrased as needed, and extended time by 50 percent to complete assignments. Strategies related to test situations were offered including a flexible setting (resource room), flexible scheduling with 50 percent more time, test items read aloud except for English, language arts/reading, and use of a calculator and clarification of instructions.

45. District provided a copy of the IEP to Student's parents. Student's parents

refused consent for implementation of the IEP and Student remained at Summit View School.

Least restrictive environment

46. School districts must provide special education students with a FAPE in the least restrictive environment (LRE). The least restrictive environment for a particular child involves the analysis of the educational benefits of placement full time in a regular education classroom, the non-academic benefits, the effect the disabled child will have on the teachers and children in the class and the costs associated with the placement. Of those four factors, evidence was offered only as to the first two factors.

47. The Placement at Palos Verdes High School offered Student the opportunity to participate in a general education curriculum on a regular education campus with support, as needed, from the RSP team including 113 minutes of an RSP class every other day and the opportunity to leave class and seek RSP assistance in any class. According to the January 25, 2006 IEP, Student would participate in general education classes with supports and accommodation 86 percent of the day. This would provide her with an opportunity to form age level peer relationships and practice her pragmatic and language skills and an opportunity to socialize with non-disabled peers during, before and between classes. The placement at Palos Verdes High School offered Student both an educational and non- academic benefit. In contrast, Summit View was a school comprised entirely of and dedicated to disabled students with no opportunity to participate in general education with non-disabled peers.

48. Summit View is a private school offering a college preparatory program for students with learning disabilities. By all accounts Student functioned well at Summit View and her educational potential was maximized in the environment created at Summit View. She benefited from the small size and low student population. Student graduated from Summit View in June of 2007 with a high school diploma.

49. Student's parents both credibly testified to Student's history of medical and educational issues. They were very concerned with their daughter's well being and protective of her health, safety and education. It is apparent that they enrolled Student in Summit View because they believed it offered the best available educational opportunity for their disabled daughter. The enrollment was made after consultation with several psychologists, neuropsychologists, and medical providers throughout the country. The parents approached District about enrolling their daughter in the public school system and about the availability of special education services appropriate for her with genuine curiosity and a desire to explore all options for their daughter. Often Student was reluctant and anxious about participating in assessments. Her parents attended and supported her at each juncture. Parents participated in the October 17, 2005 IEP and made Dr. Markel available for that IEP.

50. It is undisputed that Summit View School specializes in the education of learning disabled Students and presents a small structured environment. It is also undisputed that Student was able to receive an educational benefit at Summit View and eventually graduated from the school. Student's parents acted reasonably in researching private placements and in placing her at a recognized NPA with an emphasis on learning disabled Students. Student and her mother visited the Palos Verdes High School campus and did not like the environment. They came to the District for assessment and with the hope that District would fund their daughter's education at Summit View. Student's father was candid in his testimony. He had engaged experts to tell him what to do. He would not remove Student from her placement at Summit View and place her in the public school unless the offer of FAPE was something superior to that offered by Summit View. Her father indicated that Student did not want to appear different from others. He believed that at Summit View her disabilities would appear less prominent. The size of the campus, class size, ability to get one-to-one attention and availability of services

were the factors her parents considered. They also had concerns that she would not be able to self-advocate on a public school campus or make the navigational and landmark connections.

51. Student's parents wanted her to realize her full potential and to attend college. For that reason, it was important to them that she be placed in a college preparatory program. Because Student had tried a variety of settings, her parents believed that they knew where she would perform the best and maximize her potential. They believed that Summit View, offering a small setting with extremely personal attention and enrichment offered what Student needed to prepare her for college and to minimize her stress and discomfort. After review of the offer and the assessments, parents concluded that the District did not understand the depths of their daughter's disability or its genesis and opted to keep her at Summit View in light of what they considered to be the inadequacies of the offer of FAPE and what they considered to be the potential exacerbation of Student's OCD symptoms by a new school placement.

52. The test for whether FAPE has been offered is not whether the public school can offer a program superior to that provided by a specialized private school. The test is whether the District made an offer of FAPE in the least restrictive environment reasonably calculated to provide educational benefit to Student based upon her unique educational needs. District met its legal obligation. District offered Student a FAPE in the least restrictive environment.

LEGAL CONCLUSIONS

APPLICABLE LAW

1. Student has the burden of persuasion on all issues. (Schaeffer v. Weast, Superintendent, Montgomery County Public Schools, et al., Weast (2005) 546 U.S. 49, [126 S.Ct. 528, 163 L.Ed.2d 387].)

2. Under the federal Individuals with Disabilities Education Act (IDEA) and companion state law, students with disabilities have the right to a free and appropriate public education (FAPE). (20 U.S.C. § 1400 et seq.; Ed. Code, § 56000 et. seq.) FAPE means special education and related services that are available to the student at no cost to the parents, that meet the state educational standards, and that conform to the student's individualized education plan (IEP). (20 U.S.C. § 1401(a) (9); Cal. Code Regs., tit. 5, § 3001, subd. (o).)

3. IDEA and state law require that, in order to provide FAPE, a school district must develop an IEP that is reasonably calculated to provide the child with an educational benefit. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 203 [102 S.Ct. 3034, 3049].) The IEP must contain specified information including a statement of the child's present levels of academic achievement and functional performance, and a statement of measurable annual goals. (20 U.S.C. § 1414((d)(1)(A)(i)(I), (II); Ed. Code, § 56345, subds. (a)(1) & (2).) The district must review the child's IEP at least once a year in order to determine whether or not the annual educational goals are being achieved and make revisions if necessary. (20 U.S.C. § 1414(d)(4)(B)(i); Ed. Code, § 56341.1, subd. (d).)

4. A disabled child's IEP must be tailored to the unique education needs of that particular child who, by reason of disability, needs special education and related services. (*Heather v. State of Wisconsin* (1997) 125 F.3d 1045.) The term "unique educational needs" is to be broadly construed to include the student's academic, social, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No.1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

5. The Supreme Court addressed the level of instruction and services that must be provided to a student with disabilities to satisfy the IDEA's requirements. The Court determined that a student's IEP must be designed to meet the unique needs of the

student, be reasonably calculated to provide the student with some educational benefit, and comport with the student's IEP. However, the Court determined that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley v. Board of Hendrick Hudson* (1982), 458 U.S. 176, 198 [102 S.Ct. 3034, 73 L.Ed.2d 690].) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p.200.)

6. Under *Rowley, supra* at 179 , 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 some educational benefit, and comported with the 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.

7. 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.) In addition, federal and state law requires school districts to provide a program in the least restrictive environment (LRE) to each special education student. (See 34 C.F.R. § 300.114, et. seq. (2006).) A special education student must be educated with non-disabled peers to the maximum extent appropriate and may be removed from the regular education environment only when the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412 (a)(5)(A); 34 C.F.R. § 300.114(a) (2)(i)(ii); Ed. Code, § 56040.1.)

8. In *Sacramento City Unified School District v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402, the Ninth Circuit held that the determination of whether a particular placement is the "least restrictive environment" for a particular child involves an analysis of four factors, including (1) the education benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. However, the Supreme Court has noted that IDEA's use of the word "appropriate" reflects Congressional recognition that some settings simply are not suitable environments for the participation of some handicapped children." (*Rowley, supra*, 458 U.S. at p.197.)

9. Unless the IEP requires otherwise, a child with a disability must be educated in the school that he or she would attend if he or she were not disabled. (34 C.F.R. § 300.552(c).) Each child with a disability must participate with children who are not disabled in nonacademic and extracurricular services and activities, such as meals, recess and clubs, to the maximum extent appropriate to the needs of the child. (34 C.F. R. § 300.553.) The child's placement must be in the least restrictive environment (LRE), based on the child's IEP, and as close as possible to the child's home (34 C.F.R. § 300.522(a)(2), (b)(2), (3).) When determining which placement is the LRE, consideration is given to any potential harmful effect on the child or on the quality of services he or she needs. (34 C.F.R. § 300.552(d).) California law incorporates these requirements. (Ed. Code, §§ 56031, 56342.)

10. 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 also 20 U.S.C. § 1414(b)(3).)

11. Assessments must be conducted in accordance with assessment procedures specified in the federal IDEA and state special education law. (Ed. Code, § 56381, subd. (e).) 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; must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible; and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (20 U.S.C. § 1414 (b); 34 C.F.R. § 300.352; Ed. Code, § 56320, subds. (a) & (b).) The assessors must use a variety of assessment tools and strategies to gather relevant functional and developmental information about the child including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum, that may assist in determining whether the child is a child with a disability and what the content of the child's IEP should be. (34 C.F.R. § 300.532(b).)

DETERMINATION OF ISSUES

Did the District Fail to Assess Student in the area of Obsessive Compulsive Disorder?

District Psychologist Linelle Mitchell conducted a complete psychoeducational evaluation of Student and considered her OCD in that assessment. She utilized standardized measures, interviews, observations, teacher reports and her years of experience as a school psychologist to determine the functional level of Student's OCD in the educational setting.

Based upon Factual Findings 1 through 28 and Legal Conclusions 10 and 11, Student was assessed in all areas of suspected disability including Obsessive Compulsive Disorder.

Did the District's offer of placement contained in the October 17, 2005 and January 26, 2006 IEPS constitute a FAPE?

Based upon Factual Findings 1 through 53 and Legal Conclusions 1 through 9, District did offer Student a FAPE. A FAPE is offered when Student will receive an educational benefit. It is not necessary that Student's potential be maximized for there to be an appropriate offer. Instead, the law requires there to be an offer made on the assessed needs of Student tailored to fit those unique needs in a placement in the least restrictive environment. Here, the FAPE offer meets that criterion and would have provided Student with an educational benefit. IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. Student's parents provided her with an excellent educational program in a school that specializes in the education of students with learning disabilities. There is no doubt that student received a good education there or that the program she undertook maximized her potential for academic success with all available supports. Student's parents came to the District seeking an educational opportunity that would surpass that offered by Summit View. They did not find the District's offer of FAPE to be superior to the education that Student was receiving at Summit View and therefore rejected it. The appropriateness of the offer made by the District is not measured against the education and service package offered by Summit View. Instead, the goals, services and placement are evaluated to determine whether or not they address the unique needs of the student and confer an educational benefit. Here, the District's offer addressed the unique needs as determined by the IEP team based upon assessment data and did offer a Free Appropriate Educational in the least restrictive environment.

ORDER

All of Student's requests for relief are denied.

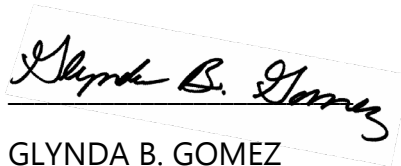
PREVAILING PARTY

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. District has prevailed on all issues.

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).)

December 17, 2007

A handwritten signature in black ink, reading "Glynda B. Gomez", is written over a horizontal line. The signature is enclosed in a rectangular box that is slightly tilted.

GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings

Special Education Division