

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANAHEIM ELEMENTARY SCHOOL DISTRICT, OAH Case No. 2017010041

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

The Anaheim Elementary School District filed a request for due process hearing with the Office of Administrative Hearings on December 28, 2016, naming Parents on behalf of Student. OAH continued this matter on January 20, 2017.

Presiding Administrative Law Judge Peter Paul Castillo heard this matter in Anaheim, California, on April 25 and 26, 2017.

Lauri A. Arrowsmith, Attorney at Law, appeared on behalf of Anaheim. Kristin Cinco, Anaheim's Senior Director of Special Services, was present throughout the hearing.

Neither Parents nor Student was present during the hearing.¹

¹ OAH properly notified Parents of the hearing date and time in the January 20, 2017 and April 14, 2017 Prehearing Conference orders; and the April 14, 2017 order properly notified the hearing location at the Key Learning Center. Parents made several attempts before and after the April 14, 2017 Prehearing Conference to continue the hearing, which OAH denied.

At the request of Anaheim, OAH continued this matter for closing briefs. The record closed on May 1, 2017, upon receipt of written closing briefs by both parties.²

ISSUE

Is Anaheim entitled to conduct assessments pursuant its November 28, 2016 assessment plan without parental consent and, without the limitations and conditions placed on the assessment by Parent?

SUMMARY OF DECISION

This Decision holds that Anaheim's November 28, 2016 assessment plan complies with all applicable statutory requirements, that the assessors it proposes to use are competent to perform the assessments, and that the notice of the plan given to Parents was proper. The Decision also holds that the assessments Anaheim proposes are warranted because Student has not been assessed since 2014 and current present levels of performance do not exist; additionally, Student has been on home-hospital instruction for several years, and there is a need to determine if Student could attend a lesser restrictive educational environment. Further, while Parents did consent to Anaheim's November 28, 2016 assessment plan in January 2017, they have subsequently not made Student available to be assessed, placed unreasonable conditions on Anaheim's proposed assessments, and provided outdated and misleading information concerning Student's health. Therefore, Anaheim may assess Student pursuant to the November 28, 2016 plan, without Parents' consent.

² Subsequent to the completion of the hearing, Student filed several requests to reopen the hearing and to submit evidence. OAH denied Student's request to reopen the hearing on May 1, 2017, and will treat the requests to submit evidence as Student's closing brief.

FACTUAL FINDINGS

JURISDICTION

1. Student is a 11-year-old female who resides with Parents, who presently live inside the geographical boundaries of Anaheim. Student is eligible for special education under the eligibility categories of autistic-like behaviors and speech or language impairment. She currently receives home/hospital instruction.³

2. Student began attending school in the Torrance Unified School District in 2009. On November 8, 2011, Torrance proposed a triennial assessment plan. Parents never provided their unconditional consent to the November 8, 2011 assessment plan, but instead attempted to impose conditions on their consent, namely the requirement that they attend Student's assessment sessions. In February 2012, Torrance placed Student on home-hospital instruction pursuant to Parents' request due to purported safety concerns, frequency of asthma symptoms, and a sleep disorder. On January 8, 2013, Torrance filed a request to assess Student and Parents refused to provide consent. The matter went to hearing, and on March 11, 2013, OAH issued a decision finding that Torrance may assess Student over parental objections.

3. Parents subsequently removed Student from Torrance and enrolled her at California Virtual Academy (CAVA). CAVA is an independent charter school that offers on-line instruction through home schooling. Student attended CAVA for the 2014-2015 school year. In December 2014, CAVA conducted psycho educational and occupational therapy assessments, and in January 2015 CAVA conducted a speech and language assessment of Student. On March 20, 2015, Parents consented to CAVA's December 28,

³ Some of the background facts are from the prior decision involving Student. (*Torrance Unified School District v. Student* (2013) Cal. Offc. Admin. Hrngs. 2013010162.) Official notice is taken of this decision. Student did not appeal the decision.

2014 individualized educational program. The IEP provided Student with specialized academic instruction, occupational therapy and speech and language services, and included 12 goals in the areas of academics, occupational therapy and, speech and language. The specialized academic instruction, occupational therapy, and speech and language services were to be provided at the charter school or service provider location.

4. Parent subsequently removed Student from CAVA at the beginning of the 2015-2016 school year and enrolled Student in Torrance. On November 12, 2015, Parents requested that Torrance provide Student with home-hospital instruction. Torrance provided Student with home-hospital academic instruction.

5. Parent enrolled Student with Anaheim at the beginning of November 2016. Father informed Anaheim that Student had an IEP from CAVA, that Student subsequently reenrolled at Torrance and just moved into the service area of Anaheim. Anaheim subsequently received from CAVA and Torrance Student's educational records. After reviewing these records, Anaheim offered on November 29, 2016, as an interim IEP placement in a general education classroom, with pull out specialized academic instruction, occupational therapy and speech and language services. Parents did not consent to Anaheim's offer and requested home-hospital instruction. Since December 2016, Anaheim has provided Student home-hospital instruction, at Student's home, as stay put services, based on the 2015 CAVA IEP. Based on the educational records Anaheim received, it did not appear that CAVA or Torrance provided Student with occupational therapy or speech and language services, and Anaheim did not provide these services at Student's home.

DEVELOPMENT OF ASSESSMENT PLAN AND PARENTS REFUSAL TO PERMIT ASSESSMENT

6. Ms. Cinco, as part of her job duties as senior director of special services, was alerted about Student when Parents enrolled Student on or about November 4, 2016. In preparation for the interim IEP offer, Ms. Cinco reviewed Student's educational records. Ms. Cinco also assisted in the development of the comprehensive assessment plan. Based on her review of Student's records, Ms. Cinco determined that a current health assessment was required as Parents wanted to continue home-hospital instruction, but Ms. Cinco did not see any current health information during her review that supported continued home-hospital instruction. Ms. Cinco was also concerned that although CAVA's assessment was only two years old, current information on Student's present levels of performance did not exist as it appeared that Student had not received the special education services in CAVA's December 2014 IEP, plus Anaheim needed to assess Student to determine if she required continued home-hospital instruction. If Student did not require home-hospital instruction, Anaheim needed to know what she required to be educated in an Anaheim school, as Student has not attended a school for almost three years.

7. At the November 28, 2016 IEP team meeting, Anaheim presented to Parents both the interim IEP offer and assessment plan. While Parents did not consent to the IEP offer, Parents consented to the assessment plan. Anaheim was to assess Student in the areas of academic achievement, health, intellectual development, language and speech communication, motor development, social-emotional and adaptive behavior. Anaheim requested that Parents sign a release of information so Anaheim could obtain Student's health information to determine if Student still required home-hospital instruction, which Parents stated that Student continued to need for the same reasons noted in the prior OAH decision.

8. Not soon after the November 28, 2016 IEP team meeting, Parents began to impose conditions on Anaheim's assessment. On December 1, 2016, Parents sent a letter

to Anaheim that indicated that the attached September 2015 request for home-hospital instruction signed by Student's doctor and simple prescriptions for home-hospital instruction dated November 12, 2015 and November 30, 2016, were adequate documentation to establish the need for home-hospital instruction. On December 7, 2016, Parents, by letter, informed Anaheim that they would not permit a medical professional contracted by Anaheim to conduct a physical examination of Student. Parents also did not permit Anaheim to assess Student at a District location, as Parents believed that medical information they provided to Anaheim established Student could only safely be assessed at home. However, Parents did not provide documentation to support this mandate. Despite Parents refusal to permit Anaheim to assess Student, Anaheim started in December 2016 to provide Student with home-hospital academic instruction for five hours a week, and to implement the goals in Student's December 2014 CAVA IEP as Student's last agreed upon and implemented educational program.

9. Due to Parents' refusal to permit Anaheim to assess Student, Anaheim filed on December 28, 2016, a hearing request to assess Student without parental consent. In response to Anaheim's complaint, Parents stated that the only dispute that existed involved the health assessment and medical information District could access. Parents and Anaheim reached an agreement subsequently for Anaheim to assess Student as Anaheim agreed to accept medical information from Student's doctor that was no older than six-months old and that the school nurse would conduct a non-intrusive examination. Also, Anaheim agreed to permit one Parent to be present at each assessment.

10. On February 16, 2017, Ms. Cinco informed Parents of the assessors identities and that the assessors would contact Parents to arrange dates and times for their assessments and location of the assessment. On March 1, 2017, Anaheim agreed with Parents' request that any assessment to occur would be done after noon due to Student's sleep disorder. On March 3, 2017, Parents wrote Anaheim again about scheduling. Finally, on March 6, 2017, Ms. Cinco created, at Parents' request, an assessment schedule for

Student with dates, times and locations, and emailed the schedule to Parents. Parents then informed Anaheim that they could not open the attachment because of concerns about computer viruses. Ms. Cinco then gave the assessment schedule to Kristie Puls, Anaheim teacher then providing Student with home-hospital instruction, and she gave Parents a copy of the schedule. Parents did not make Student available to be assessed at any of the scheduled assessment dates.

THE NOVEMBER 28, 2016 ASSESSMENT PLAN AND NEED TO ASSESS

11. Anaheim proposes to assess Student in the following areas: academic achievement, health, intellectual development, language and speech communication, motor development, social-emotional and adaptive behavior. Anaheim asserted that each of these areas is related to Student's known or suspected disabilities, based on information Anaheim possessed from the prior school records, prior decision, and present academic difficulties.

Academic Achievement

12. The November 28, 2016 assessment plan proposed having an educational specialist assess Student as to her present academic abilities. Anaheim proposed assessing Student's academic skills to find out how much progress she had made in the last two years, especially since the educational documents obtained showed concerns about the consistency of academic instruction and to obtain Student's present levels of performance. While Anaheim possessed information from CAVA and Torrance as to Student's progress on the CAVA IEP, the goals worked on were almost two years old and for Anaheim to develop appropriate goals, it needed present levels of performance obtained through an academic achievement assessment.

13. Melody Ishihara was to conduct Anaheim's academic achievement assessment. Ms. Ishihara works for Anaheim as an educational teaching specialist. She has

a mild to moderate disability teaching credential and a master's degree in special education. As part of her job as an educational teaching specialist, Ms. Ishihara performs 10 to 15 academic assessment per year, including five to 10 assessments a year of students with autism, along with assisting with the drafting of IEPs. Ms. Ishihara had reviewed Student's educational records and planned to assess Student's reading, writing and math abilities using standardized formal testing instruments for which she is qualified and trained to perform, to determine Student's strengths and weaknesses. She would take into consideration Student's health issues, such as starting her assessment after noon to ensure optimum performance due to Student's purported sleep disorder. Ms. Ishihara was qualified by education, teaching credential and training to assess Student. She also established the need to assess Student due to the need for accurate and present information as to Student academic strengths and weaknesses to assist in drafting an IEP that could provide Student with a free appropriate public education.

14. Based upon information obtained during home instruction, Anaheim had further concerns about Student's academic performance. Jennifer Guerra, an Anaheim second grade teacher, provided Student with home-hospital instruction from December 2016 through early February 2017. Ms. Puls, an Anaheim fourth grade teacher, subsequently provided Student with home instruction. Both were to provide Student with five hours a week of instruction, but scheduling issues as to Student's availability to meet with the instructors limited the amount of instruction provided. Ms. Guerra provided 17 hours of instruction and Ms. Puls provided five hours. Both noted that Student had not made much academic progress based on what was stated in the December 28, 2014 IEP as to her then present levels of performance. During their instruction, Student was only at the first or second grade levels in writing, reading and math based on her work samples, even though Student's December 2014 goals for academic subjects was to have Student at second grade levels in a year.

15. Ms. Ishihara has never met Student. She was prepared to assess Student at the dates and times proposed by Anaheim and Parents did not present Student for assessment. As to the assessment set forth in the March 3, 2017 schedule created by Ms. Cinco, when Student did not appear, Ms. Ishihara phoned Father, who told her that he just read the assessment schedule, despite receiving it a few days earlier from Ms. Puls, and was not ready to bring Student.

Health

16. Anaheim wanted to assess Student's health based on Parents' request that Student continue to receive home instruction. Anaheim School Nurse Beth Sievers was to conduct the health assessment. Ms. Sievers has a bachelor's and master's degree in nursing, along with possessing a California credential to be a school nurse. She has worked as school nurse for Anaheim since 2006, along with working as a hospital clinical nurse from 1987 through 2006. Her duties as a school nurse include looking at students' general health, developing health plans and ensuring their implementation and health assessments as part of the IEP process. For her health assessment of Student, she would interview Parents, review medical information from Student's doctor and conduct a non-intrusive examination of Student as to her general health, which would include a vision and hearing screening.

17. Ms. Sievers became aware of Student when Student enrolled in Anaheim because of Parents' home-hospital instruction request and was asked to perform the health assessment. For the health assessment, Ms. Sievers would obtain health information from Parents, along with obtaining medical information from Student's doctor as documentation she reviewed was outdated. Ms. Sievers wanted to obtain information that was not more than six months old as Anaheim does not issue permanent home-hospital instruction authorizations. Anaheim reviews home hospital instruction at least annually for students with the most severe health issues, and more frequently for students with lesser

health issues, since home-hospital instruction is the most restrictive educational environment as students do not interact with peers.

18. Ms. Sievers has spoken to Father about Student's health and Parents not making Student available to Ms. Sievers for assessment. Ms. Sievers established that the medical information Parents provided on Student was not adequate since the information was older than six months and consisted of general diagnoses, such as Student has autism and asthma. The medical documentation provided had no detailed information that would assist Ms. Sievers in determining if Student could attend an Anaheim school or required continued home-hospital instruction. Ms. Sievers established that autism, asthma or a sleep disorder by themselves or in combination are insufficient to establish the need for continued home-hospital instruction as many Anaheim students have these conditions and attend a regular school campus.⁴ Ms. Sievers was qualified by education, teaching credential and training to assess Student. She also established the need to assess Student due to the need for accurate and present information as to health to determine if Student could attend an Anaheim school, and if so, to assist in drafting a health plan to ensure her safety.

⁴ It Should be noted that both Anaheim home-hospital instructors, Ms. Guerra and Ms. Puls, did not observe any health concerns that would appear to prevent Student from attending a general education class as Student would play with other children outside, were told Student took martial arts classes, and Mother would take Student to Disneyland about once a month. Further, Father had Ms. Guerra sign a confidentiality agreement that she would not disclose any health information she observed during her home instruction, which appeared to be part of his plan to prevent Anaheim from having accurate health information about Student. Ms. Puls refused to sign a similar confidentiality agreement that Father gave her.

INTELLECTUAL DEVELOPMENT, SOCIAL-EMOTIONAL AND ADAPTIVE BEHAVIOR

19. The November 28, 2016 assessment plan proposed having a school psychologist assess Student as to her intellectual development, social-emotional abilities and adaptive behavior. Anaheim proposed assessing Student in these areas as they are typical areas of weakness for students with autism and CAVA's psycho educational assessment documented weaknesses in these areas. Anaheim needed to know how much progress Student had made in the last two years for Anaheim to develop appropriate goals as it needed present levels of performance obtained through assessing Student's intellectual development, social-emotional and adaptive behavior abilities.

20. Katherine Larios was to conduct Anaheim's intellectual development, social-emotional, and adaptive behavior assessments. Ms. Larios works for Anaheim as a school psychologist. Ms. Larios has a bachelor's degree in human services and master's in educational psychology, and possesses the appropriate credentials to be a school psychologist. She has worked as a school psychologist with Anaheim since 2006, and is a member of Anaheim's autism support team. As part of her duties, she assesses students, develops behavior support plans, attends IEP team meetings, assists in drafting IEPs, consults on behavior problems and provides school counseling. Ms. Larios has performed over 200 assessments per year, and has assessed students who have autism or where autism is a suspected disability.

21. Ms. Larios reviewed Student's education records and planned to assess Student's intellectual development using standardized formal testing instruments for which she is qualified and trained to perform. As to Student's social-emotional and adaptive behavior function, Ms. Larios planned to use standardized formal assessments and interview Parents. She would also have Parents and the home instructors complete questionnaires regarding Student's adaptive behaviors and social-emotional functioning. Ms. Larios planned to also use formal testing instruments related to autism as Student is eligible for special education services under this category, using test instruments designed

specifically to identify weaknesses students with autism often possess, through observation and rating scale questionnaires to be completed by Parents and home instructors. Ms. Larios would take into consideration Student's health issues in how she conducted her assessment to ensure accurate results. Ms. Larios was qualified by education, credentialing and training to assess Student. She also established the need to assess Student to obtain accurate and present information as to Student's intellectual development and social-emotional and adaptive behavior strengths and weaknesses to assist in drafting an IEP that could provide Student with a free appropriate public education.

22. Ms. Larios has never met Student. She was prepared to assess Student on the dates and times proposed by Anaheim and Parents did not present Student for assessment. Father did not cooperate with Ms. Larios when she tried to schedule an assessment and did not present Student as called for in the March 3, 2017 schedule created by Ms. Cinco.

Speech and Language

23. CAVA performed a speech and language assessment in January 2015 and Student's last agreed upon and implemented IEP included speech and language goals and services. As part of a comprehensive assessment to determine Student's present levels to assist in developing an IEP, Anaheim proposed conducting a speech and language assessment. Anaheim's speech and language pathologist Ceylon Gibson would conduct the assessment. Ms. Gibson has bachelor's and master's degrees, and appropriate licensure and certification to be a speech and language pathologist. Ms. Gibson has been a school speech and language pathologist since 2007, and employed by Anaheim since 2009. Her duties include performing assessments, providing speech and language therapy and consulting with school personnel. About 40 percent of the students she assesses have autism.

24. Ms. Gibson has never met Student, but has reviewed her educational records and based on her experience feels that a new speech and language assessment is needed to determine Student's present levels to develop an IEP that provides Student with a FAPE. For her assessment, Ms. Gibson would use formal and informal assessment tools and observations that looked at Student's speech fluency, expressive, receptive and pragmatic language skills, and follow the American Speech-Language-Hearing Association standards for formal and informal testing. As to assessing Student in her home, Ms. Gibson did not see anything in Student's educational records that indicated that she could not assess Student at an Anaheim site. Ms. Gibson would tailor her assessment to take into consideration health issues and known deficits of children with autism. Ms. Gibson did attempt to arrange a date and time with Parents for her assessment to no avail, and then Parents did not bring Student to be assessed in accordance with the schedule Ms. Cinco developed. Ms. Gibson was qualified by education, teaching credential and training to assess Student. She also established the need to assess Student due to the need for accurate and present information as to Student's communication weaknesses to assist in drafting an IEP that could provide Student with a free appropriate public education, especially as more current information from CAVA and Torrance did not exist.

Motor Development

25. Student's December 2014 CAVA IEP contained occupational therapy goals for sensory processing, fine and gross motor, and occupational therapy services based on CAVA's December 2014 occupational therapy assessment. Student's educational records Anaheim received did not indicate if Student received occupational therapy services from CAVA or Torrance.

26. For fine motor and sensory processing issues, the Anaheim's assessor would be Anahita Daruwalla. Ms. Daruwalla has a bachelor's degree in exercise science and master's degree in occupational therapy. She is a California and nationally board certified

occupational therapist, and possesses the appropriate California credential to provide occupational therapy for Anaheim. She has worked for Anaheim as an occupational therapist since 2005, and has extensive training and experience in assessing students with autism and providing these students with occupational therapy.

27. For gross motor skills, Jeff Oehlman was to conduct Anaheim's assessment. Mr. Oehlman has been an adaptive physical education teacher for Anaheim for this school year, and a physical education teacher for other school districts since March 2014, and was an adaptive physical education teacher during the 2013 through 2015 extended school years. Mr. Oehlman has a bachelor's degree in kinesiology, teaching credential for physical education and added authorization for adaptive physical education.

28. Both Ms. Daruwalla and Mr. Oehlman would conduct formal and informal testing as to Student's motor skills and Ms. Daruwalla as to Student's sensory processing, along with Student observation and obtaining information from Parents. Both Ms. Daruwalla and Mr. Oehlman were qualified by education, teaching credential and training to assess Student. Parents did not present Student to either Ms. Daruwalla and Mr. Oehlman for assessment as called for in the schedule Ms. Cinco developed.

PARENT'S OBJECTIONS TO THE ASSESSMENT PLAN

29. While Parents did not appear at the hearing to present any evidence, their objections to Anaheim assessing Student, which were primarily based on health concerns, were ascertained from the testimony of Ms. Cinco and documents filed by Student in various motions in this matter. However, Ms. Cinco and the proposed assessors all established that they would consider Student's health, such as starting in the assessment after noon due to Student's sleep disorder, and watching for signs of an asthma attack. Anaheim also agreed to modify its requested health assessment to allay Parents' concerns. Student also asserted in documents filed in this case that Anaheim's conduct violated Parents' religious rights and also constituted disability discrimination. None of documents

presented showed a violation of religious rights in Anaheim's desire to assess Student, nor disability discrimination as Anaheim needed current information, obtained in a non-intrusive manner, to develop an IEP so Student could make meaningful educational progress based on her unique circumstances.

30. Anaheim established its need for current information regarding Student's present levels of performance, her strengths and weaknesses and any health issues. Anaheim needed this information to attempt to determine Student's present levels of performance due to the lack of special educational services Student had received the past two years and Parents' continuing request for home instruction. Therefore, Anaheim correctly determined based on information it possessed from the prior school records, the prior OAH decision, and present academic difficulties that Student's educational needs warranted a comprehensive assessment.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁵

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)⁶; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further

⁵ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁶ All subsequent references to the Code of Federal Regulations are to the 2006 version.

education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd.(a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd.(a).) In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school personnel, that describes the child's needs, academic and functional goals related to those needs, and specifies the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd.(a).)

3. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6), (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) By this standard, District, as the filing party, had the burden of proof on all issues here.

MAY ANAHEIM ASSESS STUDENT ACCORDING TO THE NOVEMBER 28, 2016 ASSESSMENT PLAN WITHOUT PARENTAL CONSENT?

4. If the educational or related services needs of a child with a disability, including improved academic achievement and functional performance, warrant a reevaluation, the request for a reevaluation can be made by either the parent or a public agency. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

5. If parents do not consent to a reevaluation assessment plan, the district may conduct there evaluation assessment by showing at a due process hearing that it needs to assess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c); 34 C.F.R. § 300.300(a)(3)(i); Ed. Code, §§ 56321, subd. (c), 56501, subd.(a)(3).)

6. The evidence established that Anaheim had good reason to need to conduct a comprehensive assessment of Student even though CAVA had done such an assessment just two years priors. From Student's educational records that Anaheim reviewed, Student had not received continuous educational services, which raised concerns about her academic, speech and language and occupational therapy progress and lack of present levels of performance. Anaheim needed current information to develop an IEP that would provide Student with a FAPE. Further, Anaheim required current information, especially health, to determine if Student needed continued home-hospital instruction and if not, what educational setting, general education, special day classes, or some combination, would Student require, which needed to be based on current assessment information.

Is The Assessment Notice Proper?

7. Without an order after a due process hearing, reevaluation assessments require parental consent. (34 C.F.R. § 300.300(c).) To obtain parental consent, the school district must provide proper notice to the student and his or her parent. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3),(c)(1); 34 C.F.R. § 300.304(a); Ed. Code, §§56321, subd. (a).) The notice

consists of the proposed assessment plan, and a copy of parental procedural rights under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).)The assessment plan must be in a language easily understood by the public and the native language of the student; explain the types of assessments to be conducted; and notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code,§56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).) The district must give the parent atleast 15 days to review, sign, and return the proposed assessment plan.(Ed. Code, §56321,subd.(a).)

8. At the November 28, 2016 IEP team meeting, Anaheim provided the proposed assessment plan to Parents with a copy of their procedural rights, and discussed the plan and need to assess Student. The assessment plan explained the types of assessment it wanted to conduct. (Ed. Code, § 56321, subd. (b)(3).)While Parents initially consented to the assessment plan, just a few days later Parents rescinded their consent as to the health assessment. In response, Anaheim agreed to limit the health assessment to medical information that was no older than six months from Student’s doctor and a non-intrusive health examination. Further, Parents did not provide Anaheim with any current medical information supporting the contention that Anaheim could not safely conduct the other portions of the assessment at an Anaheim school location.

9. After Parents agreed again in January 2017 for Anaheim to continue its assessment, Parents kept throwing up roadblocks to the assessment as Parents were not responsive to Anaheim’s requests for medical information, and when it could assess Student. Parents did not cooperate, as they did not provide, as promised, Anaheim with current and complete health information that supported their contention that Student continued to require home-hospital instruction, or ask Student’s doctor to provide this information. Eventually, when Anaheim provided Parents with an assessment schedule, at Parents’ request, as Parents did not want to coordinate assessment times individually with each assessor, Parents lied to Anaheim personnel about not receiving the schedule when they did not make Student available to be assessed. In subsequent emails with Anaheim,

and in documents filed with OAH, Parents have vacillated between agreeing that Anaheim could assess Student and refusing permission.

10. The evidence established that Anaheim made reasonable efforts to obtain Parents' consent to the assessment plan and Anaheim personnel explained the plan to Parents at the November 28, 2016 IEP team meeting; and that Anaheim informed Parents of the contents of its assessment plan. All statutory requirements of notice were met, and the assessment plan itself complied with the applicable statutes.

Is The Assessment of Student warranted?

11. A specific educational placement means that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs, as specified in the student's IEP, in any one or a combination of public, private, home and hospital, or residential settings. (Cal. Code Regs., tit. 5, § 3042.) The continuum of program options includes, but is not limited to: regular education; resource specialist programs; designated instruction and services; special classes; nonpublic, nonsectarian schools; state special schools; specially designed instruction in settings other than classrooms; itinerant instruction in settings other than classrooms; and instruction using telecommunication instruction in the home or instructions in hospitals or institutions. (Ed. Code, § 56361.)

12. Placement in the home is one of the most restrictive placement options for a special education student. Special education and related services provided in the home or hospital are limited to eligible students for whom the IEP team recommends such instruction or services. (Cal. Code Regs., tit. 5, § 3051.4, subd. (a).) Before placing a student on home instruction, the IEP team must be assured that a student has a medical or psychological condition that prevents the student from receiving special education and related services in a lesser restrictive environment. When recommending placement for home instruction, the IEP team shall have in the assessment information a medical report

from the attending physician and surgeon or the report of the psychologist, as appropriate, stating the diagnosed condition and certifying that the severity of the condition prevents the student from attending a lesser restrictive placement. The report shall include a projected calendar date for the student's return to school. The IEP team shall meet to reconsider the IEP prior to the projected calendar date for the student's return to school. (Cal. Code Regs., tit. 5, § 3051.4, subd.(d).)

13. The circumstances warrant the reassessment of Student in all the areas identified in the November 28, 2016 assessment plan. Although Student was last assessed in December 2014 for the psycho educational and occupational therapy assessments ,and in January 2015 for the speech and language assessment, significant questions as to Student's present levels of performance existed because of lack educational services provided to Student in the intervening period by CAVA and then Torrance. Further, Parents wanted Student to continue to receive home-hospital instruction and Anaheim needed current health information to determine if Student still required this highly restrictive instruction. Anaheim has an obligation to educate Student in the least restrictive environment and it needed current information to determine if Student required home-hospital or could be served in a lesser restrictive environment; and to determine what goals, services and accommodations Student required to make meaningful educational progress.

14. Student's performance in home instruction demonstrated that Student had not made much educational progress during the past two years. Further, observations by Ms. Guerra and Ms. Puls raised concerns about the validity of Parents' statements as to Student's health as Student would play outside with other children and Mother would occasionally take Student to Disneyland, and they did not observe Student with any serious health problems. They both established that based on their instruction of Student that the information as to her present levels of performance in the CAVA assessment was severely outdated.

15. Since autism was an area of suspected disability, Anaheim needed to assess Student in areas of weakness often found with students with autism, such as speech and language, occupational therapy, social skills, adaptive skills and intellectual development. Without new assessments, Anaheim will not have the information it needs to determine Student's present levels of academic and functional performance to develop an appropriate IEP to permit Student make meaningful educational progress.

16. Anaheim is obliged by law to assess Student in all areas of suspected disability. (20 U.S.C § 1414(b)(3)(B);Ed. Code, § 56320, subd. (f).) Each of the assessments proposed in the November 28,2016assessment plan is in an area in which Anaheim had reason to believe Student is disabled, or in which she has previously received special education, accommodations, related services, or some combination. Based on CAVA's prior assessment and IEP, it is highly likely that any new IEP for Student will have to address each of the proposed assessment areas. Each of the proposed assessments is therefore required for Anaheim to obtain current information to provide Student a FAPE. For the foregoing reasons, Anaheim established its need to conduct the assessments in the November 28, 2016 assessment plan.

Will The Proposed Assessments Be Conducted By Competent persons?

17. Assessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R.§ 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils shall be made in accordance with Education Code Section 56320 and shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, §§ 56322, 56324, subd.(a).)Similar requirements apply to health examinations, which must be performed by a credentialed school nurse or physician. (Ed. Code, § 56324, subd.(b).)

18. All the assessments proposed by Anaheim will be conducted by persons competent to conduct them. As each assigned assessor established, each assessor has the licensure and training required to conduct the assessment to which he or she is assigned. Each is knowledgeable of the disability to which his or her assigned assessment relates. The qualifications of the proposed assessors comply with legal requirements.

19. Anaheim established that the November 28, 2016 assessment plan complies with all applicable statutory requirements and that the notice of the plan it gave Parents was proper. It also established that the assessments are warranted and that the assessors it proposes to use are competent to perform the assessments. Therefore, Anaheim may assess Student without Parent's consent.

ORDER

1. Anaheim is entitled to assess Student according to its November 28, 2016 assessment plan, without Parent's consent.

2. Within 14 days of this Decision, Anaheim shall notify Parents of the days, times, and places Parents are to present Student for assessment, and Parents shall cooperate in presenting Student for assessment on those days and times, and at those places. Throughout the time that the assessments are being conducted, Parents shall cooperate and transport Student to the location listed for assessment.

3. If Student is unable to go an assessment location chosen by Anaheim, because of illness, Parents shall promptly communicate this fact to Anaheim and provide Anaheim with contemporaneous medical documentation of Student's unavailability. Anaheim shall notify Parents of the new days and times for the assessments to be conducted that are no more than 14 days from the dates that Anaheim originally proposed. Any delay due to this will toll the 60 day timeline for assessment.

4. Parents shall timely complete and return any documents reasonably requested by Anaheim as a part of the assessment process.

5. If Parents do not cooperate with Anaheim during the assessment process, or do not complete and return any documents as specified above to permit Anaheim to complete its assessment, Anaheim will not be obligated to provide special education and related services to Student until Parents comply with this Order.

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. Anaheim prevailed on the only issue heard and decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: May 19, 2017

/s/

PETER PAUL CASTILLO

Presiding Administrative Law Judge

Office of Administrative Hearings