

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANAHEIM ELEMENTARY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2018060860

DECISION

Anaheim Elementary School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on June 20, 2018, naming Parents on behalf of Student.

Administrative Law Judge Vernon Bogy heard this matter in Anaheim, California on July 18, 2018.

Lauri A. Arrowsmith, Attorney at Law, represented Anaheim. Kristin Cinco, Executive Director of Special Education Services, attended the hearing on behalf of Anaheim. Parents attended the hearing on behalf of Student. Parents were assisted by a family friend. Janina Moe, a qualified Spanish-language interpreter, was present during the entire hearing and available to provide simultaneous interpretation for Parents.

At the request of the parties, OAH continued this matter to August 2, 2018, for written closing arguments. The record was closed August 2, 2018 upon receipt of written

closing arguments.¹

ISSUES

1. Was Anaheim's triennial speech and language assessment of Student appropriate such that Anaheim is not obligated to fund a speech and language independent educational evaluation at public expense?
2. Was Anaheim's September 26, 2017 psychoeducational assessment of Student appropriate such that Anaheim is not obligated to fund a psychoeducational independent educational evaluation at public expense?
3. May Anaheim exit Student from special education based on its determination at Student's individualized education program team meeting on September 26, 2017, and continued on October 31, 2017, that Student was no longer eligible for special education under the category of language and speech disorder?²

SUMMARY OF DECISION

Anaheim proved that its psychoeducational and language and speech assessments of Student were appropriate, such that Anaheim is not obligated to fund a psychoeducational independent educational evaluation or language and speech

¹ OAH received Parents' written closing argument on August 7, 2018, because Parents did not have access to OAH's e-file system. In the absence of any showing of prejudice to Anaheim, the Administrative Law Judge has considered Student's closing argument.

² The issues have been reordered for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

independent educational evaluation at public expense.

Anaheim proved that at the individualized education program team meeting convened on September 26, 2017 and continued on October 31, 2017, it properly determined that Student was no longer eligible for special education under the category of language and speech disorder, and Student is not eligible for special education.

FACTUAL FINDINGS

BACKGROUND

1. At the time of hearing, Student was a six-year-old girl³ who at all relevant times resided with her Parents within Anaheim's geographical boundaries.

2. Student was first found eligible for special education services on April 24, 2015, due to a language or speech disorder, and began receiving speech and language services prior to enrolling in kindergarten during the 2016-2017 school year. She continued to receive services through the 2017-2018 school year, when she attended first grade at Horace Mann Elementary School.

SPEECH-LANGUAGE EVALUATION BY KATHY KING

3. The IEP team reviewed the results of a speech and language evaluation conducted on August 25 and 31, 2017 and September 7, 8, and 18, 2017 by Kathy King, Anaheim's speech-language pathologist, as part of Student's triennial assessment to determine her eligibility for special education services.

4. Ms. King received a bachelor of arts degree in communicative disorders and a master of arts degree in 1987 in speech and language pathology. She worked as a speech and language pathologist for 30 years. Ms. King assessed in all areas including

³ Student turned seven years old on August 1, 2018.

expressive language, receptive language, and an informal language assessment.

5. Ms. King selected and administered the following assessment tools: Comprehensive Assessment of Spoken Language (CASL); the Comprehensive Assessment of Spoken Language 2 (CASL-2); the Sourcebook for Speech and Language Assessment; and informal language tasks and observations. Ms. King had been trained to administer these assessments and assessed Student in accordance with the test instructions. The tests were not racially, culturally or sexually biased, nor were they administered in a manner that was racially, culturally or sexually biased. All of the tests were administered in English. This was appropriate because Student's primary language designation was English at the time the assessments were conducted.

6. The CASL assessment was used to measure Student's paragraph comprehension through a series of spoken narratives, in the categories of language structure and use; lexical/semantic; and syntactic. Student's standard score was 102, which fell in the 55th percentile. That score was indicative of average ability, and showed that Student showed average skills at answering questions about spoken paragraphs.

7. The CASL-2 assessment was used to measure Student's comprehension, expression and retrieval in the categories of lexical/semantic, syntactic, supralinguistic and pragmatic language. Student's scores in this assessment ranged from 85 to 113, which established Student's overall language development was in the average range compared to other English-speaking children of her age. The scores also showed that Student had stronger skills in comprehending and expressing sentences and using language in specific situations.

8. The Sourcebook for Speech and Language Assessment was administered to measure Student's abilities at performing informal language tasks. She was asked to retell several stories by using picture cards to describe the correct order and part of the story. Student sequenced the stories with 75 percent accuracy, related correct details of

the stories with 100 percent accuracy, and used correct grammar with 56 percent accuracy. Student's speech therapy records, which were reviewed as part of this assessment, demonstrated that she was making appropriate progress to her March 2018 goals of answering "where" and "when" questions about stories, and using complete sentences with an appropriate rate and enunciation of each word. The assessment concluded that Student was within normal limits in articulation, fluency and voice quality. Ms. King observed Student five separate times between August 25, 2017 and September 20, 2017. On each occasion, Student easily answered questions and maintained conversations with Ms. King. Student followed directions and participated in all of the assessment sessions. She greeted Ms. King appropriately on each occasion when entering and leaving the room. While Student occasionally left her seat, she nevertheless remained attentive and focused on the assignments given her, and consistently made a good effort throughout the assessments.

9. In informal conversations during the assessments, Student used correct grammar with approximately 60 percent accuracy, although on one occasion, Student used a Spanish word instead of an English one. While Spanish is spoken in Student's home, the primary language used is English.

10. Ms. King concluded that Student's articulation, fluency, voice quality and skills were within normal limits. She also found that Student's social/pragmatic language skills were in the average range.

11. Student's first-grade teacher, Regina Hall, reported to school psychologist Ms. Mendoza that Student used language effectively in interactions with other students and the adults in her classroom. Ms. Hall also told Ms. Mendoza that Student was able to ask for assistance when necessary and was able to answer questions both in small and whole group settings. Ms. Hall observed that Student actively participated in reading activities, that her skills appeared to be appropriate, and Ms. Hall had no

concerns about Student's speech and language.

PSYCHOEDUCATIONAL ASSESSMENT

12. Because Student had been referred for an early triennial assessment, Ms. Mendoza, Anaheim's school psychologist, conducted Student's psychoeducational assessment and issued her report on September 26, 2017. Ms. Mendoza had conducted between 200 and 300 psychoeducational assessments in her career, typically with respect to children between the ages of four to 12-years old. She had been employed by Anaheim as a school psychologist for approximately three years. She received a bachelor of arts degree from California State University at Fullerton in Criminal Justice, and a master of arts degree from Chapman University in school psychology.

13. As part of her evaluation, Ms. Mendoza completed interviews of Parents, Student, Student's first grade teacher, and Student's primary physician. She also conducted numerous observations in a variety of educational settings. Ms. Mendoza tested Student using standardized test measures in the areas of academics, cognitive abilities, basic psychological processes, and adaptive behavior. Ms. Mendoza was trained to administer these assessments and assessed Student in accordance with the test instructions. The tests were not racially, culturally or sexually biased, nor were they administered in a manner that was racially, culturally or sexually biased. All of the tests were administered in English. This was appropriate because Student's primary language designation was English at the time the assessments were conducted.

Observations

14. Student's education specialist Tess Armstrong observed Student in the classroom on August 9, 2017. During that observation, Student worked with her sixth-grade "reading buddy," who assisted her in reading a story and then responding to questions about the story. She was engaged and responsive during the exercise,

although she needed help and prompting from her reading buddy, and waited for him to initiate all interaction and responded to his questions very quietly. When that part of the exercise was completed, Student and her buddy waited for a computer to free up so they could complete a quiz about the exercise on the computer. She needed her buddy to open the program, and when asked if she could input the information herself, she responded in the negative. Once the program was open, however, Student used the computer herself to answer the questions on the quiz, and she did so quickly and in a rushed manner. She did not pass the quiz, having earned only two out of five possible points. At the time of the observation, Student had used that particular computer program only once before. Ms. Armstrong noted that it was typical for first-graders to rely on their older reading buddies to assist them in that type of exercise.

15. After the exercise concluded, Student sat quietly for a time, and after her teacher complimented her for sitting politely, she began to fidget a bit. Thereafter, Student lined up appropriately with her classmates and waited quietly to leave for lunch.

16. On August 11, 2017, Ms. Mendoza observed Student in the classroom. Ms. Mendoza noted that Student was cooperative in working one-on-one with her teacher, and interacted well with her classmates. Student listened to and easily followed her teacher's instructions, including multi-step directions regarding her exercise. At the end of the exercise, Student lined up quietly with her classmates as they all left the classroom. They proceeded to have a class photograph taken, and then returned to the classroom to take a math test. Student appropriately wrote her name on the test, and then worked quietly on the test with the rest of her classmates. Student appropriately listened to and followed instructions, stayed on task, began work without prompting and initiated appropriate social interaction with her peers.

17. On September 13, 2017, Ms. Armstrong observed Student in the classroom. Student was engaged in her English language development class, where she

appropriately asked and answered questions regarding parts of speech and sentence framing. The timer ending the class went off, and Student quietly left her seat and walked upstairs with her classmates to her next class in the math computer lab. While some other classmates were talking in line, Student walked quietly with her hands behind her back, and when the class arrived at the computer lab, she went immediately to her assigned computer. She did not immediately sign into her computer, and when the technology assistant approached Student, she saw that an incorrect name had been entered onto the computer so Student could not log in. The teacher then helped her sign on using her correct name and password. Student then used her mouse to complete the math exercise, and while she fidgeted at times in her seat, other classmates were doing so as well. Student then completed her math assignment appropriately.

18. Ms. Mendoza observed Student on the playground on August 15, 2017, during the second half of her lunch recess. Student played appropriately with her peers, playing tag, going down the slide, playing on the swings and climbing on the cargo net. When the bell rang ending recess, Student immediately headed back to class, stopped for a drink at the drinking fountain, then joined her classmates in line. She gave her teacher a “high five” as the teacher walked by and said hello to her.

19. On August 31, 2017, Ms. Mendoza observed Student during her lunch period. Because an “inclement weather” report had been issued, Student proceeded with her classmates to the school cafeteria, and then returned to her classroom with her lunch and her classmates. She began eating her lunch, raised her hand and asked the teacher for assistance in opening a honey packet and putting a straw into her packed drink. Ms. Mendoza observed that other students had the same difficulties. Ms. Mendoza noted that Student interacted well with her classmates, knew when to ask for help, and waited patiently for the lunch supervisor to assist her.

20. During the morning of September 12, 2017, Ms. Mendoza observed Student arrive for school in the morning. Student was able to make her way without assistance from the school gate, and go to the food area to get her breakfast. She then went to an outside bench where she sat with classmates, ate her breakfast, and talked to her friends. When the bell rang for class, she appropriately threw away her food in a trash can, proceeded to the line with her classmates, and then went to class. Ms. Mendoza noted that Student engaged with her classmates, and followed school rules, as opposed to some of her classmates who were running around and playing with their food during the breakfast period.

21. During the afternoon of September 12, 2017, Ms. Mendoza also observed Student leaving her classroom, escorted by her teacher, Ms. Hall. Student proceeded by herself to the school gate, but when she did not recognize any of the adults present, she returned to an area where other students were waiting to be picked up. A few minutes later, Ms. Mendoza saw Student's brother arrive, and Student then left with her brother. Ms. Mendoza concluded that Student was aware of her surroundings, knew in which direction to walk to get to the gate, and waited patiently to be picked up.

22. On September 13, 2017, Ms. Armstrong used the Behavioral Observations of Students in Schools, a tool used for systematically observing students to measure classroom behavior as compared to randomly selected peers to observe Student in class. Student was seated at a desk in the front of the classroom facing the whiteboard. The class was practicing sight words by writing and sounding the words out. Student was actively engaged in the exercise for 40 percent of the time. That compared favorably to her randomly selected peers, who were actively engaged for only 30 percent of the time. This demonstrated that Student was slightly more on task than the peers.

23. Overall, based on the various observations, Ms. Mendoza determined that

Student was friendly and cooperative, engaged in conversation, listened to and followed instructions and directions, and stayed on task. Student responded appropriately to questions and made age-appropriate eye contact. She completed assigned tasks and easily transitioned from one activity to the next. Ms. Mendoza found that Student made a good effort on tasks assigned to her, and demonstrated problem-solving skills including trial and error, planning, and taking time on her work.

Interviews

24. As part of the psychoeducational assessment, Ms. Mendoza interviewed Mother, Student's first grade teacher Ms. Hall, Student, and Dr. Chuck Ng.

25. Mother reported that she was concerned regarding Student's safety, developmental and academic success at school, because she felt that Student demonstrated developmental delays, especially when compared to her older siblings. Mother first became worried about Student when Student was approximately one-year old. Mother felt that Student's social skills, motor skills and speech and language were below average. Mother reported that at home, Student exhibited a high activity level, did not follow directions well, and was not easy to manage, and had outbursts where she refused to cooperate. Student could not sit through a television program, and could only sit for 20 minutes while being read to.

26. Mother also told Ms. Mendoza that Student played well with older children, but could be taken advantage of, and was unwilling or unable to voice her problems, opinions or concerns. Mother described Student as very generous, and identified her interests as playing dress-up, watching television, playing outside and playing with her pets.

27. Ms. Mendoza interviewed Student's first-grade teacher, Ms. Hall, who reported that Student worked cooperatively on group projects, and applied her language skills in the class subject areas. Ms. Hall related that Student's favorite subjects

included math, reading, drawing and art, and that while Student tried her best, she needed to do better in completing her assignments on time. Ms. Hall observed that Student performed best when she was able to work on projects using her hands, when she received frequent praise and reinforcement for her correct responses to class problems, and when she was presented with assignment materials in small segments and through a multi-sensory approach. Ms. Hall noted that such teaching strategies were the common method of providing instruction to first grade students in general. Ms. Hall reported no concerns about Student's behavior at school, and felt that Student's social behaviors were appropriate for her age and grade.

28. Ms. Mendoza interviewed Student, who reported that she lived with her parents, two older brothers, and three pet dogs. She correctly identified her age and date of birth, and her favorite food and color. She told Ms. Mendoza that she enjoyed playing "hot potato" and going to the store with her mother, and related that she had gone to a friend's party, where she played on a water slide. Student told Ms. Mendoza that if she had three wishes, she would wish for a dog or cat, candy and a pink bag.

29. On May 18, 2017, Student's pediatrician, Dr. Ng, wrote a letter addressed "To Whom It May Concern," requesting that Student receive a comprehensive psychoeducational assessment from Anaheim, and that Student be tested for suspected intellectual disability. Dr. Ng recommended that Student be tested in the areas of auditory processing, executive function, adaptive function, fine motor skills and speech and language ability. Ms. Mendoza interviewed Dr. Ng. He reported that Student appeared to him to require assistance with simple tasks, and he concluded that she appeared to be developmentally delayed and not at the level of a six-year-old. Dr. Ng suggested that Student might have symptoms of attention deficit hyperactivity disorder. He also concluded that Student had symptoms of inattention, which he believed to be contrary to the reports of her kindergarten teachers, who had not found Student to

show signs of inattention, hyperactivity and impulsivity. Dr. Ng suggested that cognitive delays needed to be ruled out, and recommended that Student be evaluated by Anaheim.

30. Dr. Ng also performed a genetic test on Student to determine whether she might have an intellectual disability. The results of the test came back in the normal range, but Dr. Ng concluded that even if the results are normal, that did not mean that Student was “out of the woods.” Dr. Ng also reported that Student had a bifid (or split) uvula, which he found to be unusual, and which might be suggestive of a palate defect, although he could not point to anything specific in that regard.

Tests Conducted

31. In addition to the various interviews which Ms. Mendoza conducted, she also considered academic testing performed by education specialist Ms. Armstrong, including the Phonological Awareness Skills Screener (PASS) evaluation, the Wechsler Individual Achievement Test, Third Edition, the Common Core Phonics Skills Test, the Brigance Comprehensive Inventory of Basic Skills, the San Diego Quick Assessment, the Benchmark Assessment System, the Words Their Way Spelling Test, and the Wechsler Individual Achievement Test, Third Edition. Ms. Armstrong also administered the Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition, the Comprehensive Test of Phonological Processing, and the Comprehensive Executive Function Inventory. Student was also tested using the Behavior Assessment System for Children, Third Edition. Ms. Armstrong also assessed Student using the Brigance Comprehensive Inventory of Basic Skills, and the ADEPT oral language assessment.

Academic/pre-academic achievement

32. Ms. Armstrong held a bachelor of arts degree, a master of education degree, and a multiple subject credential. She had worked for Anaheim since 2009, and

had conducted over 100 academic assessments since 2009.

33. Ms. Armstrong found that Student's math standards were somewhat lower than, but generally commensurate with other students in her class. Her overall score on her math instructional program was 67 percent and her score on the math game portion of that program was 19 percent, as compared to a class average of 25 percent. Student added numbers to 10 in under five minutes, although she struggled somewhat with subtraction, which Ms. Armstrong found to be typical for students in her age and class range. Student read three out of 10 "blends" words (that is, words with blended vowels and consonants), and she also passed the "consonant-vowel-consonant" sections of the basic phonics skills test. She passed four out of eight reading quizzes, with an average score of 70 percent.

Reading and Writing

34. Ms. Armstrong assessed Student in reading using the Phonological Awareness Skills Screener (PASS) evaluation, an informal assessment designed to assist in detecting students who are at-risk for reading and spelling deficits. Student's scores in 10 different test areas ranged from a high of nine out of a possible 10 in the area of syllable blending, to a low of one out of 10 in phenome deletion. She scored four out of 10 in rhyme production, five out of 10 in phenome segmentation, six out of 10 in syllable deletion, and eight out of 10 in word discrimination, syllable segmentation, and phenome blending. Two of the test areas, rhyme recognition and phenome recognition, were not completed. Overall, Ms. Armstrong concluded that while Student performed well in segmenting individual word sounds, she struggled with breaking words down into individual sounds.

35. Ms. Armstrong assessed Student in reading and writing using the Wechsler Individual Achievement Test, Third Edition. The reading assessment included subtests in word reading, pseudoword decoding, reading comprehension, and oral reading fluency,

which were designed to test Student's abilities in understanding subwords, words, text levels of language, reading rate, accuracy and understanding of text. Her standard scores in the various subtests ranged from a low of 89 in oral reading fluency to a high of 97 in reading comprehension. Student's overall test scores in the reading portion of the assessment placed her in the average range. In the writing portion of the assessment, Ms. Armstrong found that Student's overall written expression ability was in the average range, with a standard score of 95, which put her in the 37th percentile.

36. Ms. Armstrong also assessed Student using the Common Core Phonics Skills Test, a phonics assessment designed to measure students' abilities to successfully identify and blend certain sounds. Student was assessed in ten different areas, including continuous sounds, stop sounds, short vowel sounds, long vowel sounds, consonant digraph sounds, consonant-vowel-consonant continuous sounds, consonant-vowel-consonant stop sounds, open/closed syllables, one syllable words, and final "e" conventions (that is, the effect on word pronunciation of a final "e" at the end of a word). Student's test scores ranged from a high of 11 out of 11 possible points in the area of continuous sounds and 10 out of a possible 10 points in stop sounds, to a low of zero points in the areas of long vowel sounds and consonant digraph sounds. She scored only one out of a possible five points in the "final e conventions" subtest, and scored three to four points out of five possible in the remaining subtests.

37. Student was also assessed for reading and writing ability using the Brigance Comprehensive Inventory of Basic Skills assessment. The Brigance Comprehensive Inventory of Basic Skills assessment was designed to assess students in the areas of readiness, reading, listening, research and study skills, spelling language and math. In the writing portion of the assessment, Student spelled 60 percent of words correctly at a first-grade level. In the reading portion of the assessment, she scored in the 60th percentile in word recognition and listening comprehension at both the pre-

primer and lower first grade level.

38. Ms. Armstrong administered the San Diego Quick Assessment to measure Student's recognition of words taken out of context. Scoring under that test was based on the Student's level of frustration at not correctly understanding words taken out of context. Ms. Armstrong found Student's frustration level was 60 percent at the pre-primer level, and 40 percent at the primer level, which meant that 60 percent of same-age children fell below her at the pre-primer level, and 40 percent of same-age children fell below her at the primer level.

39. Student was also assessed for reading and writing under the Benchmark Assessment System, which was used to determine Student's independent and instructional reading levels, and measure the level of the difficulty at which she was able to read fiction and nonfiction books. Ms. Armstrong found that Student accurately read the stories 78 percent of the time. She demonstrated limited reading comprehension, however, correctly understanding the stories only 66 percent of the time, and showed limited understanding of the text when she wrote or drew pictures about the text, correctly understanding the text only one time out of three. Student made no self-corrections of words which she read incorrectly.

40. Ms. Armstrong also assessed Student under the Words Their Way Spelling Test. On this test, Student correctly identified word patterns which used initial and final consonants, six out of seven times, and correctly identified short vowel patterns seven out of seven times. She was unable, however, to correctly identify any word patterns using digraphs, blends and long vowels. Ms. Armstrong concluded that Student's scores on this assessment placed her at an early first-grade level of reading.

Mathematics

41. Ms. Armstrong also used the Wechsler Individual Achievement Test, Third Edition, to assess Student in the areas of math composite and math fluency. The math

composite portion of the assessment was designed to measure Student's math achievement in problem solving, basic computation and reasoning. Overall, Ms. Armstrong determined that Student's overall math composite ability was below average with a standard score of 80, which placed her in the ninth percentile.

42. In the math fluency portion of the assessment, which was designed to measure the speed and accuracy of Student's math calculations, Student had a standard score of 90, which placed her in the 25th percentile. Overall, Student's math fluency was in the average range.

Cognitive Abilities and Basic Psychological Processes

43. To test Student's information processing, Ms. Armstrong administered the Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition. Student's standard score was 105 in comprehension and knowledge, which fell within the average range. Her standard score in oral vocabulary was 114, which fell into the high average range. In the area of general information, her standard score was 98, which fell in the average range. In the area of long-term storage and retrieval of information, Student scored in the average range in long-term retrieval and story recall, and in the low average range in visual-auditory learning. Student's cognitive processing speed, that is, the ability to quickly perform simple and complex cognitive tasks when under pressure, was in the low average range.

44. Student was also assessed under the Comprehensive Test of Phonological Processing, which is a measure of phonological processing, defined as "the type of auditory processing that is most strongly related to mastering reading and written language." Student's scores in the areas of phonological awareness and rapid symbolic naming were average, although her scores were below average in phonological memory and rapid non-symbolic naming.

45. In the area of visual processing, that is, the ability to use simulated mental

imagery to solve problems, Student scored in the average range. In the quantitative reasoning assessment, which measured Student's numerical reasoning and relationships and number sense, she scored in the average range.

46. In the area of attention, Ms. Armstrong assessed Student using the Comprehensive Executive Function Inventory, which used both parent and teacher observation to rate her executive functioning behaviors, including planning, emotional regulation, organization, flexibility, inhibitory control, attention, self-monitoring, initiation, and working memory. Based on Parents' observations, Student tested in the well below average range with a standard score of 69, which ranked in the second percentile. That score was in contrast to Student's score based on her teacher's observation, which placed her in the well above average ranking, with a standard score of 117, which fell in the 87th percentile.

47. Because of the disparity between Parents' observations and Ms. Armstrong's observations, Ms. Armstrong conducted further observations of Student in her classroom setting. Overall, based on the additional observations, Ms. Armstrong concluded that Student demonstrated age-appropriate executive functioning abilities as compared to her peers.

48. Ms. Armstrong tested Student using the Behavior Assessment System for Children, Third Edition, a behavior rating scale designed to classify and diagnose emotional and behavioral disorders in children. Mother completed the rating scale, describing Student's behaviors. Mother reported that Student was sensitive to some foods and did not eat enough, was generous and caring for others, and wanted to be alone when she was upset. Mother also expressed concerns about Student's safety, and particularly her ability to take initiative to attend to her own needs including eating properly, making appropriate friends, and inability to express her needs.

49. Based on Mother's report, Student fell into an at-risk classification in the

areas of externalizing problems, hyperactivity, conduct problems including rule-breaking behaviors such as cheating, deception and stealing, anxiety, depression, and social skills. She fell into a clinically significant classification in the areas of: atypicality which included behaviors which Mother considered strange, odd or disconnected; withdrawal, including unwillingness to join in group activities and difficulty making friends; attention, including difficulty maintaining appropriate levels of attention; adaptability, including difficulty in adapting to and recovering from changing or difficult situations; leadership, which, according to Mother, included difficulty in making decisions or getting others to work collaboratively; activities of daily living, where Mother reported that Student had difficulty performing simply daily tasks in a safe and efficient manner; and functional communication, with Student reported to have difficulties in her expressive and receptive communications skills, and in seeking information on her own volition.

50. Ms. Hall, Student's first-grade teacher, also completed a rating scale for Student using the BASC assessment. Ms. Hall noted that Student behaved well at school, was able to follow directions and behaved in a safe manner. Ms. Hall also reported that Student always did her schoolwork without complaining, enjoyed taking part in class activities, and responded well to praise. Ms. Hall found that Student could "go with the flow." Ms. Hall had no concerns about Student's behaviors or emotions at school.

51. Ms. Hall did not find Student to display any hyperactive behavior. Student was typically calm and displayed low levels of activity in the classroom. Student did not act more aggressively, nor did she show more rule-breaking behavior, than was typical for others of her age. Ms. Hall reported that Student did not show any more anxiety or depressive behaviors, or have any more health-related complaints, than was typical for children of her age. Student demonstrated attention levels similar to her classmates, and did not show any unusual difficulties in comprehending or completing her school work. In the categories of atypicality, adaptive skills, withdrawal, social skills, leadership, study

skills, and functional communication, Ms. Hall found Student to be in the same range as other children of her age.

52. Ms. Armstrong assessed Student using the Brigance Comprehensive Inventory of Basic Skills, which was designed to test her readiness skills in areas considered to be essential for Student's success at the kindergarten and first-grade levels. Ms. Armstrong found that Student could correctly state her name and birthday, identify her siblings, and name the state in which she lived. She recognized numerous colors, recited the alphabet by singing the alphabet song completely, and correctly read upper case letters 25 out of 26, and lower case letters 24 out of 26 times. Student was able to count to 30, write numbers in sequence to 15, and when given pictures of various objects, was later able to count 16 objects correctly. She correctly printed 18 out of 26 upper case letters and 20 out of 26 lower case letters.

53. Ms. Armstrong also assessed Student using "A Developmental English Proficiency Test oral language assessment" (ADEPT), which was designed to assess her ability to understand and generate sounds using a series of language forms and structures. Although her score had improved from an earlier ADEPT assessment conducted five months earlier, Student scored nine out of 13, which was not a passing score. She missed items including subject and object pronouns and prepositions.

54. Based on the observations of Student, the interviews conducted, and the assessments performed, Ms. Mendoza concluded that Student did not display significant behaviors which substantially affected her educational process. Her cognitive abilities, psychological processing skills and adaptive functioning abilities in the school setting fell into the average range, although based on Mother's report, fell into the below-average range at home. As compared to students of her own age, she fell into the below average to average range in global academic skills.

55. Because of the results of Mother's rating scales and the concerns

expressed by Dr. Ng, in his May 18, 2017 letter and in her interview with him, Ms. Mendoza, also considered Student's potential eligibility for special education services under the categories of autism, intellectual disability, other health impairments, and specific learning disability.

56. With respect to autism, Student's evaluation reports showed that she was able to join in and engage in appropriate reciprocal conversation, offer information, and initiate social overtures at a level commensurate with her peers. She also demonstrated appropriate body language and gestures when communicating with others, and was able to express herself through a series of non-verbal gestures including pointing at objects, shrugging her shoulder if she did not know something, smiling and showing excitement for preferred tasks. She was observed to display empathy and compassion when comforting an injured friend. Student interacted positively with her peers as well as adults. She initiated social overtures, and shared enjoyment with others. Ms. Mendoza concluded that Student did not show deficits in verbal or non-verbal communication or social interactions which would adversely affect her educational performance. In her opinion Student would not be eligible for special education eligibility under the criteria of autism.

57. With respect to intellectual disability, Ms. Mendoza found that Student's performance in the various assessments and tests showed her to be in the average range of cognitive abilities, even though Mother's reports showed her adaptive behaviors to be in the below average range, at least in the home setting. In Ms. Mendoza's opinion Student would not be eligible for special education eligibility under the criteria of intellectual disability.

58. In Ms. Mendoza's opinion, Student would not be eligible for special education under the category of other health impairment. Student placed in the high average range with respect to attention, in the normal range for hyperactivity and

attention problems, and did not show any chronic or acute health problem in the educational setting which adversely affected her educational performance. Even though Mother's report placed Student in the well-below-average range in attention, at least in the home setting, Student's attention skills at school was within the range appropriate for her age and grade.

59. Ms. Mendoza also addressed Student's potential eligibility under the category or specific learning disability, a disorder in which one or more of the basic psychological processes involved in understanding and using written or spoken language results in a deficit in listening, thinking, reading, writing, spelling, or math. Overall, Student's test results demonstrated that she fell in the average to above average range in the area of cognitive and processing abilities. She did not show any cognitive or academic weaknesses, although she did demonstrate a deficit in math subtests, which Ms. Mendoza concluded resulted from fatigue and a desire to hurry to lunch after the test. In Ms. Mendoza's opinion, Student would not be eligible for special education eligibility under the criteria of specific learning disability.

60. Finally, in Ms. Mendoza's opinion, Student was no longer eligible for special education services under the category of speech and language impairment, based on the results of Ms. King's speech and language assessment.

SEPTEMBER 26, 2017 IEP TEAM MEETING

62. Anaheim convened an early triennial IEP team meeting on September 26, 2017, because Parents and Student's pediatrician had expressed concerns about Student's suspected disabilities, and had requested assessments in all suspected areas of disability. All necessary parties attended the IEP, including Parents; Veronika Mendoza, school psychologist; Tess Armstrong, education specialist; Regina Hall, Student's first-grade general education teacher; and Kathy King, speech-language pathologist. At the time of the IEP, Student received speech and language services

pursuant to her then-current IEP dated March 22, 2017 through Anaheim's English Development program five times per week for 30 minutes each session, in the school's general education classroom setting.

63. During the September 26, 2017 meeting, the IEP team reviewed Student's psychoeducational assessment dated September 26, 2017; Kathy King's speech and language assessment based on her evaluations performed between August 25, 2017 and September 18, 2017; the school nurse's health summary; and the education specialist Ms. Armstrong's academic assessment. Because Student attended a multi-track program at school⁴, and was on recess during the month of October, the team did not complete Student's IEP at that time, to allow further assessments to be conducted.

64. The IEP team reconvened on October 31, 2017, to complete a review of Student's assessments. Mother was present. The IEP team reviewed Student's benchmark assessments and Anaheim's team members determined that throughout Student's first grade year, she was at or approaching benchmarks on all academic tasks. Specifically, Student was within the average or high average range in comprehension/knowledge, oral vocabulary, information ability, reasoning skills, and memory ability. She had already met one of her 2017 language and speech goals, and her voice quality, fluency and receptive vocabulary were within the average range. Her ability to express herself and understand language also fell within the average range.

65. The IEP team also considered eligibility for special education and related services under the categories of autism, intellectual disability, other health impairment and specific learning disability. Anaheim's IEP team members determined that Student was progressing in her general education curriculum and did not qualify for special

⁴ Students enrolled in a multi-track program attend school for three months, followed by a one-month recess.

education and related services under any of those categories.

66. Parents did not agree with Anaheim's determination that Student was not eligible for special education and related services. Therefore, the IEP team continued to provide the speech and language services she was provided pursuant to the March 22, 2017 IEP.

PARENTS' TESTIMONY AT HEARING

67. Parents contested the findings of Anaheim IEP team members regarding Student's behaviors and continuing need for special education services. Specifically, Parents observed that at home, Student was exceedingly quiet, did not speak, and if she wanted something, would simply point to the object. They observed that she seemed developmentally delayed, especially when compared to her older siblings. She was prone to outbursts, was unfocused and could only sit for 20 minutes at a time, even when watching television. She demonstrated a high level of activity, but was difficult to manage and did not follow directions well.

68. Parents also observed that Student's social skills, motor skills and speech and language appeared below average. She had difficulties pronouncing "R" and "M" sounds. While Student played well with older children, Parents felt that she could be taken advantage of, and either could not or did not demonstrate self-advocacy, and did not voice problems, opinions or concerns to others.

STUDENT'S DISAGREEMENT WITH ASSESSMENTS AND ANAHEIM'S FILING FOR DUE PROCESS

69. In March 2018, Mother provided Anaheim with a letter dated February 13, 2018 from Dr. Ng, Student's pediatrician, indicating that, based on his examination of Student, he disagreed with the results of Anaheim's assessments and recommended independent assessments. However, Anaheim never received a formal request for

independent evaluation from Parents.

70. In response to the letter from Dr. Ng, on March 19, 2018, Anaheim sent Parents a prior written notice indicating that it would be filing a request for due process hearing to defend the results of its assessments. Anaheim disagreed with Dr. Ng's determination that Student presented with an intellectual disability.

71. Because there was a continuing disagreement regarding assessment and Student's continued eligibility for special education and related services, Anaheim filed a request for due process hearing.

LEGAL AUTHORITY AND 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. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁶ et seq.; 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 free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for 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

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

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

standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.)

"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 a statement of 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. In *Board of Education of the Hendrick Hudson Central School Anaheim v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school Anaheim to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.)

4. The Supreme Court's recent decision in *Endrew F. v. Douglas County Sch. Dist. RE-1* (2017) 580 U.S.____, 137 S.Ct. 988 reaffirmed that to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a

child to make progress appropriate in light of the child's circumstances.

5. 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.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) 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]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Anaheim filed the complaint, therefore, it had the burden of proving the essential elements of on the issues presented.

ISSUE 1: ANAHEIM'S SPEECH AND LANGUAGE ASSESSMENT

6. Anaheim contends that its speech and language assessment met the legal standards and that Student is not entitled to an independent educational evaluation. Parents contend that Student continues to struggle academically, that speech-language therapy has had a significant positive impact on her speech and behavior progression, and that denying her speech therapy support would impede Student's ability to reach the academic standards placed in her grade level. Accordingly, Parents seek an independent speech and language evaluation.

Applicable Law

7. Before any action is taken with respect to the initial placement of a special education student, an assessment of the student's educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a special education student must be

reassessed at least once every three years, or more frequently if conditions warrant, or if a parent or teacher requests an assessment. (Ed. Code, § 56381, subd. (a).) No single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (20 U.S.C. § 1414 (b)(2)(B); Ed. Code, § 56320, subd. (e).)

8. Tests and assessment materials must be used for the purposes for which they are valid and reliable, 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)(3)(A)(iii)-(v); Ed. Code, § 56320, subd. (b)(2), (3).) In California, a test must be selected and administered to produce results “that accurately reflect the pupil’s aptitude, achievement level, or any other factors the test purports to measure . . .” (Ed. Code, § 56320, subd. (d).) A school district must ensure that a child is assessed “in all areas related to” a suspected disability. (Ed. Code § 56320, subd. (c), (f).)

9. Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code, §§ 56320, subd. (g), 56322; see, 20 U.S.C. § 1414(b)(3)(A)(iv).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324, subd. (a).) School districts are required to ensure that the assessment tools and strategies provide relevant information that directly assists persons in determining the educational needs of a child. (34 C.F.R. § 300.304(C)(1)-(7).)

10. Tests and assessment materials must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (20 U.S.C. § 1414(a)(3)(A)(i)-(iii); Ed. Code, § 56320, subd. (a).)

11. An assessor must produce a written report of each assessment that

includes whether the student may need special education and related services and the basis for making that determination. (Ed. Code, § 56327, subds. (a), (b).)

12. Upon completion of an assessment, the district shall provide parents with a copy of the evaluation report and the documentation of determination of eligibility. (20 U.S.C. § 1414(b)(4)(B); 34 C.F.R. § 300.306(a)(2); Ed. Code, § 56329, subd. (a)(3).) The personnel who assess a student must prepare a written report that includes: (1) whether the student may need special education and related services; (2) the basis for making that determination; (3) the relevant behavior noted during observation of the student in an appropriate setting; (4) the relationship of that behavior to the student's academic and social functioning; (5) the educationally relevant health, development, and medical findings, if any; (6) for students with learning disabilities, whether there is such a discrepancy between achievement and ability that it cannot be corrected without special education and related services; and (7) if appropriate, a determination of the effects of environmental, cultural, or economic disadvantage. (Ed. Code, § 56327.)

13. Under certain conditions, a student is entitled to obtain an independent educational evaluation at public expense. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502 (a)(1); Ed. Code, § 56329, subd. (b) [incorporating 34 C.F.R. § 300.502 by reference]; Ed. Code § 56506, subd. (c) [parent has the right to an individualized education program as set forth in Ed. Code, § 56329]; see also 20 U.S.C. § 1415(d)(2) [requiring procedural safeguards notice to parents to include information about obtaining an individualized education program].) "Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." (34 C.F.R. § 300.502(a)(3)(i).) To obtain an independent educational evaluation, the student must disagree with an evaluation obtained by the public agency and request an independent educational evaluation. (34 C.F.R. § 300.502(b)(1), (b)(2).)

14. When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for due process hearing to show that its assessment is appropriate or ensure that an individualized education program is provided at public expense. (34 C.F.R. § 300.502(b)(2); Ed. Code § 56329, subd. (c).)

15. Based upon the foregoing authority, Anaheim timely filed a request for due process hearing to show that its assessments were appropriate. Parents sent Dr. Ng's February 13, 2018 letter recommending independent evaluations to Anaheim in March 2018. On March 19, 2018, Anaheim sent Parents a prior written notice indicating that it would be filing a request for due process hearing to defend the results of its assessments. On June 20, 2018, Anaheim filed a request for due process hearing. Anaheim did not unduly delay in responding to Parents' request for independent educational evaluations or in filing a due process hearing request.

Analysis

16. Anaheim's speech and language assessment met all state and federal requirements, and yielded valid results, resulting in a written report, that the IEP team considered and discussed with Parent at an IEP meeting. Anaheim timely assessed Student and held an IEP team meeting to discuss the results of the assessment.

17. Anaheim established that Ms. King was qualified to administer the speech and language assessment by virtue of her education and experience. She is a credentialed speech and language pathologist and has performed assessments of many students over the course of a 30-year career. Ms. King was both knowledgeable of Student's disability and competent to perform the assessment based upon her education and experience. She tested Student in English, the primary language by Student and her family in the home. Ms. King selected the assessment tools administered to Student because they were reliable and valid for the purpose for which

they were administered. Ms. King had been trained to administer these assessments and assessed Student in accordance with the test instructions.

18. In Parents' opinion, the speech and language assessment did not accurately reflect Student's current skills and abilities because in the home setting, Student was extremely quiet, did not speak, pointed at objects rather than asking for them, and had difficulty pronouncing certain letters. This does not demonstrate that the assessment was inappropriate at the time, or that further assessment was warranted. While various tests and observations confirm that Student presented as a quiet child there was no evidence that her academic progress was adversely affected by that behavior. That Student's current speech and language skills in the home setting may be different than the skills demonstrated in Anaheim's assessment does not invalidate the assessment.

19. Anaheim proved by a preponderance of the evidence that the speech and language assessment complied with all legal requirements for assessments, and accordingly Anaheim is not obligated to fund a speech and language independent educational evaluation at public expense.

ISSUE 2: ANAHEIM'S PSYCHOEDUCATIONAL ASSESSMENT

20. Anaheim contends that its psychoeducational assessment met the legal standards and that Student is not entitled to an independent psychoeducational assessment of Student. Student contends the assessment was not appropriate and that she should remain eligible for special education and related services.

Applicable Law

21. Paragraphs renumbered 7 through 14 are incorporated by reference in this section.

Analysis

22. Anaheim established that Ms. Mendoza is a qualified to administer the psychoeducational assessment by virtue of her education and experience. She is a credentialed school psychologist and had performed assessments of many students. Ms. Mendoza was both knowledgeable of Student's disability and competent to perform the assessment based upon her education and experience. Ms. Mendoza selected the assessment tools administered to Student because they were reliable and valid for the purpose for which they were administered. She had been trained to administer these assessments and assessed Student in accordance with the test instructions.

23. Ms. Mendoza used a wide variety of tests and procedures including numerous interviews, record reviews, and observations for her assessment; she did not rely on any one procedure as the sole criteria for determining Student's eligibility for services. The test instruments she used were employed for valid and reliable purposes, were not discriminatory, and were administered according to their instructions.

24. Because Dr. Ng had voiced concerns about other areas under which Student might potentially be eligible for special education services, Ms. Mendoza, as part of her psychoeducational assessment, also assessed Student's potential eligibility for special education services under the categories of autism, intellectual disability, other health impairments, specific learning disability, in addition to speech and language impairment. In each case, based upon her observations of Student and review of all assessments, she opined Student was not eligible for special education eligibility under any of those categories.

25. Anaheim proved by a preponderance of the evidence that the psychoeducational assessment complied with all legal requirements for assessments, and accordingly Anaheim is not obligated to fund a psychoeducational independent educational evaluation at public expense.

ISSUE 3: MAY ANAHEIM PROPERLY EXIT STUDENT FROM SPECIAL EDUCATION?

26. Anaheim contends that it properly determined that Student is no longer eligible for special education under the category of speech and language, and accordingly Student may properly be exited from special education. Parents contend that Student continues to struggle academically, that speech-language therapy has had a significant positive impact on her speech and behavior progression, and that denying her speech therapy support would impede Student's ability to reach the academic standards placed in her grade level. Accordingly, Parents argue that Student should remain eligible for special education services.

Applicable Law

27. "A student is eligible for special education under the category of language and speech disorder when he or she demonstrates difficulty understanding or using spoken language to such an extent that it adversely affects his or her educational performance and cannot be corrected without special education and related services." (Ed. Code, § 56333.) The difficulty understanding or using spoken language must result from any of the following: 1) articulation disorders, such that the pupil's production of speech significantly interferes with communication and attracts adverse attention; 2) abnormal voice, characterized by persistent, defective voice quality, pitch, or loudness; 3) fluency difficulties which result in an abnormal flow of verbal expression to such a degree that these difficulties adversely affect communication between the pupil and listener; 4) inappropriate or inadequate acquisition, comprehension, or expression of spoken language such that the pupil's language performance level is found to be below the seventh percentile for his or her chronological age or development level on standardize tests; 5) hearing loss which results in a language or speech disorder and significantly affects educational performance. (*Ibid.*; Cal. Code Regs., tit. 5, § 3030, subd. (c).)

28. In *Hood v. Encinitas Union School District* (9th Cir. 2007) 486 F.3d 1099, 1107-1108, 1110, the court found that a child may have a qualifying disability, yet not be found eligible for special education, because the student's needs can be met with modification of the general education classroom. In *Hood*, the due process hearing officer and the reviewing court looked to the child's success in the classroom as shown by the child's grades and the testimony of teachers as evidence that the child's needs could be met in a general education classroom without specialized education and related services. (*Ibid.*)

29. A local education agency may request a due process hearing when there is a disagreement about a proposal to change the special education eligibility of a child. (See Ed. Code, § 56501, subds. (a)(1) & (a)(2).) In general, independent educational program team decisions are reviewed using the "snapshot" rule, meaning that the actions of the District cannot "be judged exclusively in hindsight" but instead, "an IEP must take into account what was, and what was not, objectively reasonable . . . at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) Here, however, the "snapshot" rule does not apply to limit consideration of Student's current eligibility to what was known at the September 26, 2017 and October 31, 2017 IEP team meetings because the District's due process hearing request framed the issue in terms of Student's present eligibility. (See, *Dublin Unified School District v. Student*, OAH Case No. 2006060896, fn. 1 (determining that a district's due process hearing request controlled what the relevant time period was for purposes of determining eligibility); see, also, *Tustin Unified School District v. Student*, OAH Case No. . 2008120809; *South Pasadena Unified School District v. Student*, OAH Case No. 2011050857.)

Analysis

30. Anaheim proved by a preponderance of the evidence that as of the date of hearing, Student was no longer eligible for special education under the category of language and speech. The evidence showed that Student's education was not adversely impacted by her speech and language, as demonstrated by testimony from Anaheim's speech-language pathologist at hearing, Student's first grade teacher, Anaheim's psychoeducational assessor, and Student's results on standardized tests. In particular, although she showed occasional academic deficits by falling into below average ranges in some areas, Student's overall classroom performance was in the average to above-average range in most instances, and she showed abilities commensurate with her peers in reading, reading comprehension, writing and oral presentation. In light of the above, Anaheim demonstrated by a preponderance of the evidence that Student is no longer eligible for special education on the basis of a speech and language disorder at this time, and may be exited from special education without parental consent.

ORDER

1. Anaheim is not obligated to fund an independent educational evaluation at public expense in the area of speech and language.
2. Anaheim is not obligated to fund a psychoeducational independent educational evaluation at public expense.
3. As of the date of this Order, Student is no longer eligible for special education.

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 each of issues decided.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) 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 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

DATED: August 17, 2018

/s/

VERNON BOGY

Administrative Law Judge

Office of Administrative Hearings