

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2020060369
CASE NO. 2020100601

THE CONSOLIDATED MATTERS INVOLVING

PARENTS ON BEHALF OF STUDENT, AND

CHINO VALLEY UNIFIED SCHOOL DISTRICT.

DECISION

FEBRUARY 4, 2021

On June 4, 2020, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student naming Chino Valley Unified School District, as respondent. On June 18, 2020, Chino Valley filed its response. The matter was continued for good cause on July 15, 2020. On October 20, 2020, Chino Valley filed a due process hearing request naming Parents on behalf of Student as respondents. On October 23, 2020, OAH issued an order consolidating the cases.

Administrative Law Judge Jennifer Kelly heard this matter by videoconference in California on December 8 through 10, 2020.

Student's Parents appeared on behalf of Student throughout the due process hearing and were accompanied by Student's uncle. Parents are each referred to individually in this Decision as Parent 1 and Parent 2. Parent 1 and Uncle attended all hearing days. Parent 2 attended a portion of the hearing on December 10, 2020 for the purpose of providing testimony. Interpreter Padmanabhan Venkateswaran attended all hearing days, providing Tamil to English and English to Tamil interpretation for Parent 2 on December 10, 2020, and occasionally interpreting parts of the hearing for Parent 1.

Julie Coate, Attorney at Law, represented Chino Valley. Anne Ingulsrud, Special Education Director for Chino Valley, and Royal Lord, Program Manager, West End Special Education Local Plan Area or SELPA, attended all hearing days on behalf of Chino Valley. Chino Valley is a member of the West End SELPA.

At the parties' request, OAH continued the matter to January 4, 2021, for written closing briefs. The parties timely filed their closing briefs, the record was closed, and the matter was submitted on January 4, 2021.

STUDENT'S ISSUES

1. Did Chino Valley deny student a free appropriate public education, or FAPE, by failing to offer an educational program and placement designed to address Student's pica disorder?
2. Did Chino Valley deny Student a FAPE by failing to offer an educational program and placement to address Student's safety deficits while playing outside with other students?

3. Did Chino Valley deny Student a FAPE by failing to offer an educational program and placement to address Student's safety deficits regarding elopement from the classroom and outside play area?

CHINO VALLEY'S ISSUE

4. Was Chino Valley Unified School District entitled to conduct the assessments of Student proposed in the July 7, 2020 assessment plan?

Student's complaint did not define the time period for which she contended Chino Valley's educational program and placement did not address Student's pica, elopement behaviors and playground safety issues and therefore denied a FAPE. However, at hearing the evidence presented by Student was limited to the 2019-2020 school year. Accordingly, this Decision is limited to whether Chino Valley's offers of FAPE for the 2019-2020 school year were appropriate to address Student's pica, elopement behaviors and playground safety.

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- 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 further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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, assessment, 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, and 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, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) In this consolidated matter, Student bore the burden of proof on Student's issues, and Chino Valley bore the burden of proof Chino Valley's issue. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was eight years old and in third grade at the time of hearing. Student enrolled in the Chino Valley district on November 18, 2019 and lived with Parents within Chino Valley's geographic boundaries at all relevant times. Student was eligible for special education under the category of autism.

ISSUE 1: DID CHINO VALLEY DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION BY FAILING TO OFFER AN EDUCATIONAL PROGRAM AND PLACEMENT DESIGNED TO ADDRESS STUDENT'S PICA DISORDER?

Student contended Chino Valley denied Student a FAPE during the 2019-2020 school year beginning November 18, 2019, by failing to offer an educational program and placement designed to address Student's pica disorder. Chino Valley asserted that it offered Student an educational program and placement that addressed Student's pica behaviors, but Parent insisted on placement in a non-public school and would not consider the placement.

A FAPE means special education and related services that are available to an eligible child that meet state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a) and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, 300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

The IDEA, federal regulations and California statutes address student transfers from one school district to another, in the same state, in the middle of a school year.

The new school district must provide Student with a FAPE with “comparable” services to those described in the last consented to IEP from the prior school district, in consultation with the parent, for no more than 30 days. Within 30 days of the transfer, the receiving district must hold an IEP team meeting at which either the previous IEP is adopted, or a new IEP is developed. (20 U.S.C. § 414(d)((2)(C)(i)(I); 34 C.F.R. § 300.323(e); Ed. Code, §§ 56043, subd. (m)(1), § 56325, subd. (a)(1).)

STUDENT’S PICA BEHAVIORS

The evidence was undisputed that Student engaged in behaviors such as mouthing inedible objects in both the school and home settings. At hearing, various witnesses referred to these acts as “pica” or “pica behavior.” The evidence was unclear whether Student had true pica, which is a constant, perseverative need to consume non-edible objects which interferes with everyday functioning. However, the evidence did establish that Student frequently engaged in oral sensory seeking behaviors, including a desire to eat and mouth non-edible items. Student offered no evidence regarding how frequently these behaviors occurred or whether they interfered with her ability to function at school.

Student’s most recent consented to and implemented IEP was dated April 29, 2019 and was developed by Placentia-Yorba Linda during the 2018-2019 school year when Student was in first grade. The April 29, 2019 IEP will be referred to in this Decision as the Placentia-Yorba Linda IEP. At that time, Student was residing within the residential boundaries of the Placentia-Yorba Linda School District. The Placentia-Yorba Linda IEP indicated Student had significant deficits in verbal, non-verbal and social communication skills, which adversely affected her ability to participate in school activities and develop school readiness and academic skills. Student required

specialized instruction and related services that could not be reasonably provided within a regular school setting.

The Placentia-Yorba Linda IEP offered Student placement in a moderate to severe program that provided Student a high degree of structure, reinforcement and supervision, a low student to teacher ratio, and the opportunity for close monitoring and immediate feedback by staff trained in behavior modification and augmentative alternative communication use. It provided Student supplementary supports to address Student's oral sensory seeking behaviors, including hand-held chewable or edible materials. The Placentia-Yorba Linda IEP provided Student additional adult support during non-academic times, such as free play, art and transitions, to monitor and restrict Student from ingesting non-food items.

CHINO VALLEY'S COMPARABLE SERVICES OFFER UPON TRANSFER

Student enrolled in the Chino Valley district on November 18, 2019. Parent 1 had communicated with Steven Cazares, Program Specialist for Chino Valley, in early October 2019, prior to the family's move into the district, to explain Student's special needs, including her pica behaviors. Student also had provided Cazares the Placentia-Yorba Linda IEP. On November 18, 2019, following Cazares' review of the Placentia-Yorba Linda IEP, Chino Valley offered Student a comparable educational program. As Chino Valley had no special education classroom appropriate to Student's needs, it offered the moderate-severe class in the San Bernardino County Superintendent of Schools program at Liberty Elementary.

Steven A. Cazares testified at hearing. He was employed as a Program Specialist at Chino Valley during the 2019-2020 school year. He had worked in the area of special education for seventeen years. He held a Bachelor of Arts in Communication, a Master

of Arts in Special Education, and an Administrative Services Credential. His responsibilities as Program Specialist included supporting families with children with special needs and recommending appropriate educational placements. Cazares explained Student was offered the same services and accommodations included in her last Placentia Yorba-Linda program, which included the following services aimed at addressing Student's pica behaviors: (1) chewable or edible materials to replace her pica or oral sensory seeking deficit, including hand-held chew items, chips, gummies, candy and cereal; and (2) daily additional adult support across all settings to monitor and restrict Student from ingesting non-food items. The April 29, 2019 IEP did not indicate that Student's pica behaviors interfered with her learning or that of others.

Parents did not agree to Chino Valley's offer of placement and services at Liberty. Instead, around December 3, 2019, following the week-long Thanksgiving holiday break, Parents informed a representative at the San Bernardino County Superintendent of Schools that they would not enroll Student at Liberty, but instead desired to enroll her at ECE 4 Autism, a nonpublic school located in Orange, California. Parents rejected Placentia Yorba-Linda's offer before touring the Liberty campus or speaking with the principal, teachers or staff there.

PARENTS' REQUESTED NONPUBLIC-SCHOOL PLACEMENT

ECE 4 Autism is a non-public school serving students with autism between first grade through high school. At hearing, Parents and Uncle expressed a strong desire to have Student attend ECE 4 Autism. They believed the program at ECE 4 Autism would support Student's behavioral challenges and keep Student safe. Student offered no specific evidence of what services and supports ECE 4 Autism would provide, nor did she

explain why the program offered by Chino Valley was insufficient to meet Student's needs.

In his initial communication with Cazares on in October 2019, Parent 1 told Cazares that he wanted Student placed at ECE 4 Autism. Parent 1 described Student as having aggressive behaviors, elopement tendencies and pica disorder, and he believed ECE 4 Autism could keep Student safe. The evidence established that Parents worked with Hoonoosh Farzaneh, the Director of ECE 4 Autism starting in October 2019 to develop ways of describing Student's conduct to Chino Valley in a manner that would ensure placement at Farzaneh's school. On October 11, 2019, Farzaneh told Parent 1 to convey to Chino Valley that Student had eloped from school grounds "multiple times" and that she had come home "vomiting due to eating multiple objects at school." Farzaneh advised Parent 1 on October 28, 2019, to tour any placement offered by Chino Valley and to point out all the safety issues he observed. She also suggested that Parents tell the IEP team that Chino Valley's offer of FAPE was "not enough to keep [Student] safe" and point out all the "safety issues" Parents had with the program. These communications occurred prior to Chino Valley's initial offer of placement and services to Student, and Farzaneh therefore could not have known whether Chino Valley's offer of FAPE would be sufficient to address Student's safety needs.

Parents heeded Farzaneh's advice. Parent 1 advised Chino Valley on multiple occasions, starting as early as October 9, 2019, that Student engaged in severe elopement behavior and, "even eloped from prior school district public school placements". He conveyed to Chino Valley that Student had eaten nonedible objects at her prior school and then "vomited". At hearing, Student offered no evidence that at her prior school Student had eloped from school grounds or vomited from ingesting nonedible objects. In her closing brief, Student repeated these factual allegations,

although no such evidence was offered at hearing. None of the testimony or documentary evidence offered by either party suggested that Student's pica behaviors were as severe as argued by Student.

The San Bernardino County Superintendent of Schools County notified Anne Ingulsrud, Director of Special Education for Chino Valley, on December 3, 2019, that Parents had rejected the offer of placement at Liberty. Ingulsrud sent Parents a letter on December 16, 2019, confirming Chino Valley's offer of placement and services at Liberty. Ingulsrud reiterated the program was comparable to Student's previous program, and the IEP team would convene to review the initial offer of placement and program 30-days after Student's placement to evaluate whether the program was appropriate. Ingulsrud's letter also notified Parents that Chino Valley rejected Parents' request for placement at ECE 4 Autism. Ingulsrud's letter enclosed the notice of procedural safeguards required by the IDEA.

On December 3, 2019, Farzaneh advised Parent 1 that he might need to enroll Student at Liberty and then "fight to have her removed." Parents completed an enrollment packet for Liberty on December 26, 2019. However, they did not send Student to Liberty at any time during the 2019-2020 school year.

CHINO VALLEY'S FURTHER IEP OFFERS

A district is required to hold an IEP team meeting within 30 days of a student's transfer within its boundaries from another school district in the middle of a school year. The district must either adopt the previous IEP or develop a new IEP. (20 U.S.C. § 1414(d)((2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, §§ 56043(m)(1) & 56325(a)(1).)

Chino Valley convened an IEP team meeting on January 7, 2020, which Parent 1 attended with Uncle. Parent 1 reiterated his concerns about Student's safety and his desire to send Student to ECE 4 Autism. Chino Valley emphasized the safety of the proposed placement. Chino Valley adopted Student's last approved IEP from Placentia-Yorba Linda and offered it as an IEP amendment with placement at Liberty. Parents did not consent.

Dr. Stephen DeFrancis, Program Specialist for Chino Valley, attended the IEP team meeting on behalf of Chino Valley. Mary Laihee, Principal at Liberty, Estela Carlos, Special Education Teacher, and Shagufta Sandy, Occupational Therapist, attended on behalf of the County. Parent 1 and Student's Uncle attended. Parent 1 gave permission to excuse the Speech and Language Pathologist.

Parent 1 and Uncle believed Student was not adequately supervised at her prior school and sometimes ate non-food items. Parent 1 reiterated his request for Student's placement at ECE 4 Autism.

DeFrancis testified at hearing. DeFrancis had served as Program Specialist for Chino Valley since August 2018. DeFrancis had worked in special education since 2008. DeFrancis held a Master of Business Administration, a Master of Arts in Education and a Doctor of Education. He held a Clear Level II Administrative Services Credential and a Clear Level II Educational Specialist Credential. His responsibilities as Program Specialist included supporting the IEP teams, training staff, ensuring compliance with the IDEA and recommending placements for students.

DeFrancis explained at hearing that the IEP team considered and addressed Parent 1 and Uncle's concerns about Student's pica behaviors at the January 7, 2020 IEP team meeting. He confirmed that Liberty would implement the Placentia-Yorba Linda

IEP, including supports and services. At hearing, DeFrancis' testimony was unequivocal: Chino Valley's practice was to faithfully implement the previous IEP of a student transferring into the district from another school district. He persuasively explained that the small class size, low ratio of students to teachers, close monitoring of Student by trained staff, constant supervision across school settings and supplementary aids and supports were designed to address Student's pica behaviors. He confirmed the Placentia-Yorba Linda IEP, including the positive behavior interventions and supplementary supports would be implemented with fidelity.

Carlos testified at hearing. Carlos had been a special education teacher for 13 years. She had worked at the County for 7 years. She held a Bachelor of Arts and a Clear II Educational Specialist Credential. She was trained in Crisis Prevention Intervention to prevent and positively manage disruptive, challenging or aggressive behavior. She was certified in Cardiopulmonary Resuscitation. Carlos had significant experience working with students with autism, Down syndrome and intellectual disabilities. Carlos had taught many students who exhibited pica and elopement behaviors. She was familiar with behavioral strategies and positive behavior interventions that mitigated these behaviors.

Carlos' explained that Chino Valley's program would address Student's pica behaviors. The low student to staff ratio and constant supervision throughout the school day with instructional aide support would prevent Student from ingesting non-edible items. Carlos explained that providing Student chewable or edible materials to replace Student's oral sensory seeking deficit would further reduce the likelihood of Student mouthing or ingesting inedible objects. Carlos' substantial experience as a special education teacher and knowledge of students with autism, and her careful and

logical explanation about how Student's pica behaviors would be addressed rendered her testimony persuasive. Accordingly, her testimony was given substantial weight.

Chino Valley convened another IEP team meeting on January 27, 2020. Parents had toured Liberty. Parent 1 continued to believe the placement was unsafe and expressed concern that Student could eat non-edible items. He observed objects on the floor, such as Legos and hand-sanitizer, and was concerned Student would try to ingest these objects. Chino Valley reiterated its offer to implement the program and services contained in the Placentia-Yorba Linda IEP. Chino Valley's offer addressed Student's pica behaviors by providing Student a program with a two to one student to teacher ratio to support Student during small and large group instruction. It provided Student supplementary aides and services and other supports to address Student's oral sensory seeking behaviors, including hand-held chewable or edible materials and additional adult support during free play, art and transitions, to monitor and restrict Student from ingesting non-food items.

Parents continued to believe that the offer of placement and services would not meet Student's needs concerning her pica behaviors. Parents asserted, without evidence, that the teachers and staff at Liberty would be unable to prevent Student from eating non-edible items.

STUDENT FAILED TO PROVE CHINO VALLEY DENIED HER A FAPE BY FAILING TO ADDRESS HER PICA NEEDS

To determine whether a district offered a student a FAPE the focus must be on the adequacy of the district's proposed program. (*Gregory K. v. Longview Liberty Elementary School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314, (*Gregory K.*).

The evidence established that the small class size, low ratio of students to teachers, close monitoring of Student by teachers and staff, and constant supervision across school settings addressed Student's pica behaviors. The IEP supports, including providing Student chewable or edible materials to replace Student's oral sensory seeking deficit, and additional adult support during non-academic times to minimize Student's likelihood of ingesting inedible objects further addressed this behavior. Parents testified that Student sometimes ate hair, dirt paint chips and hand sanitizer. However, other than expressing concern that Student might ingest non-edible items, Student offered no evidence establishing that Chino Valley's proposed educational program was inadequate to address Student's pica behaviors. Student called no witness who questioned the validity of Chino Valley's offer. Nor did Student offer evidence of any component of the placement or related services that should have been included in Chino Valley's offer to address Student's pica behaviors.

The IEP team is not required to adopt all of the parents' recommendations or grant the parents' preference for a specific school. (*Ms. S. v. Vashion Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1136, *superseded by statute on other grounds*, 20 U.S.C. § 1414(d)(1)(B).) An IEP team must avoid offering an inappropriate placement simply to honor the parents' wish for the child to be educated in a particular setting where doing so would deny the student a FAPE. (*J.W. v. Fresno Unified School District* (9th Cir. 2010) 626 F.3d 431, 448-449.) No evidence was presented demonstrating that a nonpublic placement was necessary to keep Student safe from her pica behaviors. Furthermore, the evidence of Parent 1's attempts to coordinate with the Director of ECE 4 Autism, to denigrate any Chino Valley suggested placement, cast doubt on the credibility of Parents' testimony that Chino Valley's proposed program was unsafe.

Student failed to meet her burden to prove by a preponderance of the evidence that Chino Valley's offer of offer of placement and services denied her a FAPE by failing to address her pica behaviors. Student did not prevail on Issue One.

ISSUE 2: DID CHINO VALLEY DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION BY FAILING TO OFFER AN EDUCATIONAL PROGRAM AND PLACEMENT DESIGNED TO ADDRESS STUDENT'S SAFETY DEFICITS WHILE PLAYING OUTSIDE WITH OTHER STUDENTS?

Student contended that Chino Valley's offers of FAPE failed to address Student's safety deficits while playing outside with other students. Student offered evidence regarding Student's elopement behaviors while playing on the playground at her prior school, which is addressed in Issue 3 below. Chino Valley contended that its offer of FAPE in the moderate to severe, special day class at Liberty was adequately designed to consider Student's safety deficits while playing outside with other students.

The IEP team must consider the use of positive behavioral interventions and supports, and other strategies to address that behavior, when a child's behavior impedes his learning or that of others. (34 C.F.R. § 300.324(a)(2)(i).)

The evidence established that during the 2018-2019 school year while Student attended school within the Placentia-Yorba Linda school district, Student engaged in negative behaviors, such as disrupting other students, hitting, pinching others and head butting. Student did not play with toys appropriately or interact with her peers during play periods. Student had difficulties during unstructured times, such as recess. Student required adult assistance to remain seated during instructional time and to support her safe and productive play.

The Placentia-Yorba Linda IEP contained a Special Factors section, which addressed the IEP team's concern that Student's negative behaviors, such as leaving the playground or multi-purpose room, impeded her learning and that of others. It contained positive behavior interventions, strategies and supports to address Student's behaviors. The positive behavior interventions included a visual daily schedule, a reinforcement system, a personalized communication device utilizing Student's preferred items, a visual timer to help with transitions, and direct teaching of self-regulation and self-calming techniques. It offered Student additional adult support across all settings, including while on the playground. Student would be taught self-regulation and self-calming techniques such as taking deep breaths when she was feeling angry or frustrated and to ask for help with her communication device or through sign language. It developed a reaction plan in the event Student's behaviors escalated.

Chino Valley established at hearing that its offer of placement and services was designed to address Student's safety issues while playing outside with other students. Cazares, DeFrancis and Carlos unequivocally explained that the positive behavior interventions were designed to address Student's maladaptive behaviors during unstructured time, including while playing outside with other children and would be implemented by Chino Valley. They opined the significant adult support and supervision during unstructured play periods and positive behavior interventions, strategies and supports were reasonably calculated to provide Student with an educational benefit.

Parent 1 and Uncle described Student as being constantly in motion and moving very quickly. However, they did not explain why they believed Chino Valley's offer of placement and services was inadequate to keep Student safe while playing outside with

other children. No witness offered testimony regarding how the educational program offered by Chino Valley was inadequate to keep Student safe while playing outside with her peers. Nor did Student explain how placement at a non-public school would provide additional safety measures necessary to meet Student's unique needs. . Farzaneh had specifically suggested to Parent 1 that he point out all the safety issues he had with any placement offered by Chino Valley. Parent 1 raised safety concerns about the Liberty placement prior to ever seeing the campus, which reflected his unsupported belief that no offer of placement by Chino Valley would keep Student safe.

Student failed to prove by a preponderance of the evidence that Chino Valley's offers failed to address Student's safety while playing outside with other children. (*Gregory K., supra*, 811 F.2d 1307, 1314.) Student failed to meet her burden of proof on Issue Two.

ISSUE3: DID CHINO VALLEY DENY STUDENT A FREE APPROPRIATE PUBLIC EDUCATION BY FAILING TO OFFER AN EDUCATIONAL PROGRAM AND PLACEMENT TO ADDRESS STUDENT'S SAFETY DEFICITS REGARDING ELOPEMENT FROM THE CLASSROOM AND OUTSIDE PLAY AREA?

Student contended that Chino Valley's offer of placement and services denied her a FAPE by failing to address her safety deficits regarding eloping from the classroom and the outside play areas. Chino Valley contended that its offer of placement and services was designed to address Student's safety deficits regarding elopement.

During the 2018-2019 school year, Student occasionally eloped, that is, ran away from classroom or staff members or left a designated area such as the playground or multi-purpose room without permission. The Placentia-Yorba Linda IEP indicated that

Student eloped approximately five times over twenty-one days and reflected that her elopement behavior impeded her learning. No evidence was introduced that Student had eloped from campus.

At hearing, Carlos discussed the severity of Student's elopement behaviors as described in the Placentia-Yorba Linda IEP. At the time of hearing, Carlos had only taught Student through distance learning, but she had reviewed the Placentia-Yorba Linda IEP and participated in the January 7, 2020 and January 27, 2020 IEP team meetings. Carlos explained that in her experience, elopement behavior, particularly for a Student diagnosed with autism, was not unusual, and opined that five acts of elopement over twenty-one days by wandering off or running away from teachers and staff was not severe.

Carlos explained how the positive behavioral interventions contained in the Placentia-Yorba Linda IEP mitigated elopement behavior. She explained that providing Student a visual schedule, a timer to help with transitions from preferred to nonpreferred activities, teaching self-regulation techniques and providing Student positive reinforcements would help Student stay focused and minimize her behaviors of avoiding nonpreferred activities by eloping. She explained the additional aide support during non-academic times such as free play or transitions, would prevent Student from causing physical harm to herself or others. The secure campus, low student to teacher ratio and constant adult supervision provided further support to address Student's elopement behaviors.

Parents expressed concern that Student was constantly in motion and moved very quickly. Parent 1 recounted that at her prior school Student had run away from the playground and common room but was followed and located by school staff. No

evidence was presented whether Student was ever out of sight or how long she was unattended. No witness offered testimony regarding how the educational program offered by Chino Valley was inadequate to address Student's elopement behaviors.

Parents' concerns about Student's safety was based on their belief that it was possible Student could elope from the special day classroom at Liberty. Parent 1 asserted that the interior door of the classroom should have been locked to prevent Student from eloping from the classroom. This claim lacked merit because the locking of interior exit doors violates applicable fire codes and would create an obvious health and safety danger. (Cal. Code Regs., tit. 8, § 3235.) Therefore, Parent 1's argument that Chino Valley's offer was inappropriate because the classroom doors should have been locked from the interior was not credible.

Parent 1 further suggested that Student might elope from the Liberty campus or playground and run into the road. Parent 1 and Uncle asserted that during their tour of the Liberty campus on January 17, 2019, they observed that one of the exterior gates near the school parking lot was unlocked. They were concerned Student could run away from her classroom or playground and exit the campus through the unlocked gate.

Parent 1 initially asserted that the unlocked gate he observed was closest to the moderate to severe special day classroom. He conceded on cross-examination the gate he observed was located further away from the special day class. Uncle 1 did not specify in his testimony which gate he observed was unlocked.

DeFrancis credibly explained that Parent 1's main concerns at the IEP team meetings was the possibility of Student eloping from campus. DeFrancis was familiar with the Liberty campus. DeFrancis visited the Liberty campus during the 2019-2020 school year approximately three to five times weekly. The entire campus was

surrounded by a fence. The exit gate closest to the moderate to severe classroom remained locked during school hours. Staff physically monitored the students during the entirety of the school day across all settings.

Carlos' testimony was consistent with DeFrancis. Carlos confirmed the Liberty campus was surrounded by fencing. The moderate to severe classroom was housed in a portable building on the west side of the campus. The closest gate to the classroom was on the southwest side of the campus. The gate remained locked during the school day.

Carlos explained that the gate that Parent 1 and Uncle described as being unlocked was on the south side of the campus near the bus drop off, which adjoined the school parking lot. The school buses entered the campus through a long driveway from a road on the southside of the campus. The school parking lot abutted a row of residential housing. Therefore, there was no road in the near vicinity of the moderate to severe classroom. Carlos convincingly explained that the gate described by Parent 1 and Uncle was not near the moderate to severe classroom or playground. Parent 1 and Uncle's assertion that Student could elope from the campus, therefore, was not reasonably probable.

Moreover, Carlos confirmed that students in the moderate to severe special day class were closely supervised by adults throughout the school day across all settings, including the classroom, the playground, and common areas. Teachers and staff were trained in First Aid, CPR and Crisis Prevention Intervention. During her 7-year tenure at Liberty, none of Carlos' students had eloped from the campus.

Student failed to prove by a preponderance of the evidence that Chino Valley's offers of placement and services were not appropriate to address Student's elopement

behaviors. Although Parents did not like the Liberty campus because of their concerns that Student could elope from the classroom or the playground, this mere concern did not make the Chino Valley program inappropriate. Student offered no material evidence proving the program or placement was inadequate to address Student's elopement behaviors. Student failed to meet her burden of proof on Issue 3.

ISSUE 4: WAS CHINO VALLEY ENTITLED TO CONDUCT THE ASSESSMENTS OF STUDENT PROPOSED IN THE JULY 7, 2020 ASSESSMENT PLAN?

Chino Valley seeks permission to conduct a comprehensive assessment of Student without the limitations and conditions placed on the assessment by Parents. Chino Valley contended that it complied with all statutory requirements for notice of the proposed assessment. It asserted that reassessment was necessary to gather relevant and reliable information to update Student's IEP and those assessments needed to be completed in person.

Parents contended that they consented to the assessments of Student, but they had the right to impose certain conditions to protect Student's health and safety. Parents declined in-person assessments during the Covid-19 health emergency and concerns about Student's safety during the assessments.

The IDEA provides for reevaluations, referred to as reassessments under California law, to be conducted not more frequently than once a year, but at least once every three years, unless the parent and school district agree otherwise. (20 U.S.C. § 1414(a)(2)(A); 34 C.F.R. § 300.303(a); Ed. Code, § 56381, subd. (a)(1).) A reassessment must be conducted if the school district determines that the educational or related service needs, including improved academic achievement and functional performance,

of the pupil warrant a reassessment, or if the pupil's parent or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Reassessment requires informed parental consent. (20 U.S.C. §§ 1414(b)(1), 1215(b)(3) & (c)(1); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56321, subd. (a). The school district must provide proper notice to the student's parents to obtain their consent to a reassessment. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and California state law. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c); Ed. Code, §§ 56321, subd. (a), and 56381, subd. (f)(1).) The assessment plan must be in language easily understood by the general public and provided in the native language of the parent. It must explain the types of assessments the district proposes to conduct, and state that an IEP will not result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4); see also 34 C.F.R. § 300.304(a).)

In addition, the proposed written assessment plan must include a description of any recent assessments conducted, including available independent assessments. It must include any assessment information the parent requests to be considered, and information indicating the pupil's primary language and the pupil's language proficiency in the primary language. (Cal. Code Regs., tit 5, § 3022.)

The assessment plan must be accompanied by notice that advises parents that an IEP team meeting will be scheduled to discuss the assessment results and recommendations. (Ed. Code § 56329, subd. (a)(1).) The notice must also explain limitations on eligibility for special education and related services, and that parents will

receive a copy of the assessment report and documentation of the determination of eligibility. (Ed. Code, § 56329, subds. (a)(2), (3).) It must state that a parent has the right to obtain, at public expense, an independent educational assessment under certain circumstances, and explain the procedure for requesting such an assessment. (Ed. Code, § 56329, subd. (b).) It must explain the due process hearing procedure that a school district may initiate to defend against an independent assessment at public expense, and the rights of a school district to observe a student in a proposed publicly financed nonpublic school placement. (Ed. Code, § 56329, subds. (c), (d).)

On July 20, 2020, Chino Valley provided Parents notice of a proposed assessment plan dated July 7, 2020 and a copy of the notice of procedural safeguards. Despite being sent on July 20, the assessment plan was dated July 7, 2020, and will be referred to in this Decision as the July 7, 2020 assessment plan. Student did not dispute that the July 7, 2020 assessment plan was genuinely necessary. Parent 1 signed the assessment plan on August 7, 2020. However, Parents did not make Student available for in-person assessments in light of concerns over Student's safety.

The fact that reassessments are warranted is undisputed. Chino Valley found reassessments warranted due to Student's absence from school during the 2019-2020 school year and reports by Parents that Student's pica and elopement behaviors jeopardized her safety. Parents agreed to assessments of Student's academic achievement, health, intellectual development, language and speech, motor development, social emotional/behavior, adaptive behavior and functional behavior as signified by the proposed assessment plan signed by Parent 1. The issue impeding assessment involves the Parent-imposed conditions under which the assessments will be conducted given then ongoing COVID-19 pandemic and considerations about Student's safety.

Student did not attend school at Chino Valley during the 2019-2020 school year due to her placement dispute with Chino Valley. After signing the assessment plan, Parents enrolled Student in the moderate to severe special day class at Liberty on August 17, 2020, for the 2020-2021 school year. Student participated in distance learning instruction due to the COVID-19 pandemic. However, Parents refused to produce Student for the consented assessments.

Parents contended that they were justified in placing certain conditions on the in-person assessments to address Student's safety. Chino Valley made reasonable efforts to address Parents' concerns about Student's safety during the assessment. Jennifer Chleboun, School Psychologist, advised Parents by email on August 25, 2020, of the specific safety protocols that the district assessors undertook when assessing students in-person. Ingulsrud followed up with Parents by letter on October 8, 2020 and confirmed the assessments of Student would be made in accordance with the San Bernardino Department of Public Health guidelines. The safety measures included each assessor opening the assessment room door five to ten minutes before each session. The desk, chair, surfaces, writing materials and testing materials were wiped and sanitized prior to each assessment session. Student's temperature would be checked at the front office prior to entering the assessment room. The assessor would meet Student at the front office and escort her to the assessment room. Student would be required to wear a face mask and to sanitize her hands. Each assessor would wear a mask and/or face shield and gloves.

Parents notified Chleboun on August 27, 2020 that they would not allow Student to appear for in-person assessments. Then, Parents advised Chino Valley on October 26, 2020, that they would allow the in-person assessment, but only if Parents and Student's sibling could be present. Ingulsrud replied on October 27, 2020, that Chino Valley could

perform the assessment in a room with a one-way mirror and that Parents and sibling could observe the assessments from the room next door.

Parents responded on November 9, 2020 and changed their demand. They wanted Parents, Student's Uncle and her sibling to attend the in-person assessments, and they would "interrupt" the assessment if they felt Student's health or safety was in danger. Ingulsrud responded on November 12, 2020, that Student's Uncle could not attend, and that any interruption of the assessments could invalidate their validity because of assessment protocols. Chino Valley gave Parents a tour of the assessment room on December 3, 2020. Parents requested that a barricade be used to block the door so Student could not exit the room and requested the removal from the room of several sanitization products.

Chleboun explained that in-person assessments of Student were necessary to meet the standardization requirements of the assessments, and that conducting parts of the assessments virtually would invalidate the assessments. She explained that the assessment in intellectual development, which tests memory, attention, auditory processing, visual processing, phonological processing and adaptive skills must be done in person to comply with test protocols and insure the tests were conducted in the same manner as Student's same aged, typically developing peers. In-person observation of Student's behaviors was required to accurately evaluate Student's social/emotional functioning. She opined that to assess Student's adaptive functioning she had to observe, among other things, Student's ability to follow directions, stay attentive, and follow one and two step directions.

Shagufta Sandy, Occupational Therapist explained at hearing that as part of her formal assessment of Student she needed to observe Student's behavior in the school

environment, as well as evaluate her fine motor, visual motor and visual perceptual functioning which could not be done via video conference.

S. Francis Yu, School Nurse persuasively opined at hearing that the proposed health assessment by Chino Valley could not be completed via videoconference. Accordingly, Chino Valley reasonably determined that Student's current health needed to be reassessed.

Deborah Arroyo, Speech and Language Pathologist explained at hearing that she could not complete standardized assessments of Student via video conference as protocols for these assessments required that they be administered in person. Arroyo explained that these assessments required the assessor to show the Student a series of pictures, and for Student to point to the correct answers.

The testimony from Chino Valley's proposed assessors regarding the need for in-person assessments was uncontroverted. Student submitted no evidence establishing that any of the assessments could be accurately completed via videoconference.

At no time from November 18, 2019, the date Student moved into the school district, through the date of the due process hearing, had Chino Valley's teachers and staff observed Student in person in the school setting. Chino Valley made repeated efforts over many months in conversations with Parents, in IEP team meetings and through correspondence to address Parents' safety concerns about Student's pica and elopement behaviors. Chino Valley's experts persuasively testified an updated assessment would help the IEP team determine Student's needs and how to support her given the issues raised by Parents. Chino Valley also established that its assessors were qualified to conduct the proposed assessments.

Chino Valley's proved by a preponderance of the evidence that Student could be safely assessed in person with the current safety measures and protocols in place. Parents' refusal to allow Chino Valley to assess Student in person and their requests to be present in the room along with Student's sibling and Uncle, barricade the door, remove cleaners and intention to interrupt the assessments were unreasonable conditions and impediments to Chino Valley's ability to assess Student in a manner that would produce results that accurately reflected Student's levels of functioning.

Parents who want their child to receive special education services must allow reassessment if conditions warrant it. (*Gregory K., supra*, 811 F.2d 1307, 1316.) *In R.A. v. West Contra Costa Unified School District* (*R.A. v. West Contra Costa Unified Sch. Dist.* (N.D. Cal., August 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795 [nonpub. Opn.], *affd.* (9th Circ. 2017) 696 Fed.Appx.171), a parent's refusal to permit her child to be assessed unless she was allowed to see and hear the assessment while it was being conducted was considered unreasonable. In that case, the 9th Circuit determined that the school district had the right to assess student and denied parent's requested conditions. Here, Student provided no legal authority supporting her position that she is entitled to impose conditions on assessments that impede Chino Valley's ability to complete an assessment necessary to evaluate her special education needs.

The conditions imposed by Parents raised insurmountable barriers to permit Chino Valley to conduct valid assessments. Chino Valley met its burden of proving that reassessments of Student are warranted in the areas of academic achievement, health, intellectual development, language and speech, motor development, social emotional/behavior, adaptive behavior and functional behavior. Chino Valley is entitled to assess Student pursuant to the July 7, 2020 assessment plan.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

STUDENT'S ISSUES:

Issue 1: Chino Valley did not deny student a free appropriate public education by failing to offer an educational program and placement designed to address student's pica disorder. Student did not prevail on Issue One.

Issue 2: Chino Valley did not deny Student a free appropriate public education by failing to offer an educational program and placement to address Student's safety deficits while playing outside with other students. Student did not prevail on Issue Two.

Issue 3: Chino Valley did not deny Student a free appropriate public education by failing to offer an educational program and placement to address Student's safety deficits regarding elopement from the classroom and outside play area. Student did not prevail on Issue Three.

CHINO VALLEY'S ISSUE:

Issue 4: Chino Valley may assess Student pursuant to the July 7, 2020 assessment plan without Parents' consent and without the limitations and conditions placed on the assessment by Parents. Chino Valley prevailed on this issue.

ORDER

1. Chino Valley is entitled to assess Student pursuant to the July 7, 2020 assessment plan. The 60-day deadline to complete the assessments shall begin on the date of this Decision.
2. Chino Valley shall notify Parents within 10 business days from the date of this Decision of the dates, times and locations Parents are to present Student for assessments on those dates, times and locations.
3. If Student is unable to attend the assessments due to illness, Parents shall promptly communicate this fact to Chino Valley and provide Chino Valley with documentation, written and signed by a qualified medical provider. Parent shall permit Chino Valley to communicate, verbally or in writing, with the medical provider who wrote and signed the document regarding Student's medical condition. Chino Valley shall inform such medical provider of this Decision's findings and order that Chino Valley has the right to assess Student without conditions or limitations. In rescheduling the assessments, the parties shall mutually agree on days and times for assessments to be conducted that are no more than 30 days from the dates that Chino Valley originally proposed. Parent shall reasonably cooperate in timely rescheduling the assessments.
4. Parent shall timely complete and return any documents reasonably requested by Chino Valley as part of the assessments, including ratings scales and questionnaires.
5. Parent shall comply with any parameters that Chino Valley deems necessary to conduct a valid assessment, which includes but is not limited

to, Chino Valley's ability to test and observe Student outside the presence of Parents and without Parents' interference.

6. Any delay due to Parents' failure to present Student for assessment or comply with any of the orders as specified above, will toll the 60-day timeline for assessment, and Chino Valley will not be obligated to provide special education and related services to Student until such time as Parents comply with this Order.

RIGHT TO APPEAL THIS DECISION

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

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings