

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

ANAHEIM ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2024020688

DECISION

APRIL 26, 2024

On February 21, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Anaheim Elementary School District, called Anaheim, naming Student. Administrative Law Judge Thanayi Lindsey heard this matter by videoconference on March 19, 20, 21, and 26, 2024. An Administrative Law Judge is called ALJ.

Joshua Walden, Attorney at Law, represented Anaheim Elementary School District. Kristin Cinco, Senior Director of Special Services, attended all hearing days on Anaheim's behalf. Parent represented Student and attended all hearing days. Student

attended the hearing on March 19, 2024. Spanish language interpreter Maria del Carmen Aguirre de Carcer provided interpretation and translation services during the hearing.

On March 19, 2024, the ALJ and parties met and conferred off the record for approximately 45 minutes to discuss the order of witnesses and their testimonies. Parent notified the ALJ that due to a language barrier, Parent did not upload the exhibits per the Order Following the Prehearing Conference. After considering Anaheim's objections, the ALJ gave Parent permission to upload the exhibits for Student's case-in-chief to Case Center. Anaheim was granted permission to upload additional exhibits. Case Center was available to both parties until March 20, 2024 at 5:00 p.m.

With agreement of the parties, the issue for hearing was amended as listed below. At the conclusion of testimony and at the parties' request, the matter was continued to April 15, 2024, for written closing briefs. The briefs were timely received, the record was closed, and the matter was submitted on April 15, 2024.

ISSUE

Did Anaheim conduct and prepare a legally compliant January 18, 2024 occupational therapy assessment and report, so that Student was not entitled to an independent educational occupational therapy evaluation at public expense?

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.) All future references to the Code of Federal Regulations are to the 2006 version, unless otherwise indicated. 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 free appropriate public education, referred to as 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).)

Anaheim filed for a due process hearing and had the burden of proof in this case. 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 ten years old and in fifth grade at the time of hearing. Student resided within Anaheim's geographic boundaries at all relevant times. Student was eligible for special education for the primary category of Specific Learning Disability and the secondary category of Other Health Impairment.

During the 2023-2024 school year, Student was enrolled at Anaheim's Lincoln Elementary in the dual language immersion class where the English and Spanish languages were spoken equally. This general education class was taught by Liceth Rodriguez, Student's fifth grade teacher. Parent's native language is Spanish.

ISSUE 1: DID ANAHEIM CONDUCT AND PREPARE A LEGALLY COMPLIANT JANUARY 18, 2024 OCCUPATIONAL THERAPY ASSESSMENT AND REPORT, SO THAT STUDENT WAS NOT ENTITLED TO AN INDEPENDENT EDUCATIONAL EVALUATION FOR OCCUPATIONAL THERAPY AT PUBLIC EXPENSE?

Anaheim contends the occupational therapy assessment was appropriate because it was conducted and reported in compliance with all special education laws governing assessments. Therefore, Anaheim argues it was not required to fund an independent educational evaluation for occupational therapy at public expense.

Student disagrees with the District's occupational therapy assessment and requested an independent evaluation on the basis that the assessment was not appropriately conducted, and the report did not recommend additional occupational services. Student contends Parent's concerns were not considered when the assessments were conducted. Student also argues the occupational therapy assessment was deficient because Student was not interviewed. Upon receipt and review of the assessment report at the individualized educational team meeting, Student requested an independent evaluation.

ASSESSMENT PLAN AND PARENTAL CONSENT

An assessment requires parental consent. To obtain parental consent for an assessment, the school district must provide proper notice to the student and their parent within 15 days of an assessment being requested by parents. (20 U.S.C. § 1414(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural rights under the IDEA and related state law. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) and (c)(1); Ed. Code, § 56321, subd. (a).)

Consent means the parent has been fully informed, in the parent's native language, of all information relevant to the activity for which consent is sought, the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. (34 C.F.R. § 300.9(a), (b).)

The assessment plan must be in language easily understood by the general public. It must be provided in the native language of the parent or other mode of communication used by parent. It must also 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).) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

On September 15, 2023, Parent requested, in Spanish, Anaheim to assess Student in an occupational therapy assessment in the following areas:

- Attention
- Adaptive skills
- Sensory reactivity
- Performer test situation
- Sensory integration, motor skills, and praxis
- Visual perception
- Auditory
- Language processing
- Tactile-perception
- Vestibular processing
- Proprioceptive awareness
- Gross motor skills
- Practice
- Social participation
- Executive functioning

On September 29, 2023, Anaheim sent Parent a timely assessment plan in Spanish which proposed to assess Student in the following areas:

- Academic Achievement by an educational specialist
- Health by a school nurse
- Intellectual Development, Social Emotional/Behavior, and Adaptive Behavior by a school psychologist
- Language/Speech Communication Development by a speech language pathologist
- Motor Development and Sensory Processing by an occupational therapist, as well as Motor Development by adapted physical education specialist
- Functional vision by a vision specialist.

Stephanie Bernal, Anaheim's Program Specialist, testified credibly that the assessment plan was presented in Parent's native language, Spanish, and included

- the reason for the proposed assessment,
- the description of the proposed assessment areas,
- other relevant factors to the proposal such as Student's identification as an English learner, and
- the description of the evaluation procedures.

The assessment included a notice of the procedural safeguards regarding Parent's rights. Additionally, Bernal's testimony established that Parent's consent was received on November 8, 2023, after Anaheim gave Student more than 15 days to review the assessment plan. Overall, the assessment plan was legally compliant.

In addition to giving parental consent to the assessment plan, Student's consent included a request to expand the scope of the occupational therapy to include the following 14 areas:

- Attention
- Adaptive skills
- Sensory reactivity
- Performer test situation
- Sensory integration, motor skills, and praxis test
- Visual perception
- Auditory language processing
- Tactile-perception
- Vestibular processing
- Proprioceptive awareness
- Gross motor skills
- Praxis
- Social participation
- Executive functioning

On December 6, 2023, Bernal sent Parent a prior written notice in Spanish explaining that Anaheim would expand the scope of the occupational therapy assessment to include

- sensory integration,
- tactile,
- vestibular processing,
- proprioceptive awareness, and
- praxis.

However, Anaheim denied Parent's request to include sensory reactivity and performer test situation as part of the occupational therapy assessment. Bernal explained that the remaining areas of Parent's request were included in other pending assessments. For these reasons, Parent's request to expand the scope of the occupational therapy did not negate Parent's initial consent. The evidence was void of any indication that Student's consent was conditional upon expanding the scope of the assessment. Therefore, the Parental consent was properly obtained for the assessment and Anaheim properly sent prior written notice for the areas they would not be adding to the assessment plan.

THE OCCUPATIONAL THERAPY ASSESSMENT

THE OCCUPATIONAL THERAPIST WAS QUALIFIED TO CONDUCT THE ASSESSMENT

A district must ensure that a child is assessed in all areas related to a suspected disability. (20 U.S.C. § 1414(b)(3)(B); Ed. Code § 56320, subd. (f).) Assessments must be conducted by individuals who are both "knowledgeable of [the students] disability" and "competent to perform the assessment, as determined by the local educational agency." (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).)

Hye Jin Lee, referred to as Lee, performed the occupational therapy assessment. The assessor received a Bachelor of Science degree in occupational therapy and Master of Arts degree in occupational science at University of Southern California. Lee was a registered occupational therapist with the National Board of Certification in Occupational Therapy and licensed by the State of California. Lee completed courses regarding sensory processing and motor-related services in the occupational therapy field to maintain licensing.

Lee worked for Anaheim for nine years as an occupational therapist. Lee conducted over 200 assessments during her tenure with Anaheim. There, Lee evaluated students with specific motor difficulties, consulted with the teachers and the parents regarding individualized special educational services, and attended the IEP team meetings to explain the findings and the conclusions of the assessment reports.

Lee completed an occupational therapy assessment for Student in 2021 and was familiar with Student's medical and school history for the 2024 assessment. Lee was aware of Student's current IEP special educational services and accommodations. At hearing, Lee confidently explained each section of the assessment report and answered the technical questions clearly and concisely. Additionally, Lee was candid about the minor errors in the report, which are discussed below. Based on Lee's testimony and evidence regarding the education, skills, and her knowledge of Student, Lee was qualified to conduct the occupational therapy assessment.

THE ASSESSOR REVIEWED EXISTING EVALUATION DATA

In performing an assessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); 34 C.F.R., § 300.305; Ed. Code, § 56381, subd. (b)(1).) An educational agency cannot use a single measure or evaluation as the sole criteria for determining whether the pupil is a child with a disability and in preparing the appropriate educational plan for the pupil. (Ed. Code, § 56320, subd. (e); see also 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).)

As a part of the assessment, Lee reviewed the Multi-Disciplinary 2024 report that provided comprehensive information on Student's health, developmental, and educational background information. Lee also reviewed Student's individualized educational plan and Student's educational records. Parent and Rodriguez were asked to complete Anaheim's Occupational Therapy and Physical Therapy Medical and Developmental History Questionnaire Form. Lee carefully reviewed both the parent's and teacher's questionnaire responses. Lee noted Parent's concerns regarding motor development and sensory processing. Based on the evidence and Lee's testimony, Lee performed a comprehensive review of existing data used to conduct the occupational therapy evaluation.

THE ASSESSOR USED A VARIETY OF ASSESSMENT TOOLS THAT WERE
COMPREHENSIVE IN NATURE AND TECHNICALLY SOUND TESTING
INSTRUMENTS

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. (34 C.F.R. § 300.301(a) (2007); Ed. Code, § 56320.) 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).)

The assessment must be sufficiently comprehensive to identify all of the student's special education and related services/needs, whether or not commonly linked to the disability category in which the child is classified. (34 C.F.R. § 300.304(c)(6).)

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).)

A district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether he is eligible for special education, and the content of the student's program. (20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).) An assessment tool must "provide relevant information that directly assists persons in determining the educational needs of the child." (34 C.F.R. § 300.304(c)(7).)

Assessors must use "technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." (20 U.S.C. § 1414(b)(2)(C); 34 C.F.R. § 300.304 (b)(3)(2006).) "Technically sound instruments" generally refers to assessments that have been shown through research to be valid and reliable. (Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46540-46541, 46642 (Aug. 14, 2006).)

On December 12, 2023, January 12, 2024, and January 18, 2024, Lee conducted a series of standardized tests and school observations to assess Student in the areas of

- sensory integration,
- praxis, motor skills (fine and gross),

- tactile,
- vestibular, and
- proprioceptive awareness.

According to Lee, sensory integration was defined as how Student regulated and organized the sensory system in their environment. Praxis was defined as how Student planned and executed a new motion, akin to riding a bicycle. Visual perception was defined as how Student saw a visual stimulus and replicated it. Tactile was defined as how Student perceived touch. Vestibular processing was related to Student's balance and spatial orientation. Proprioceptive awareness was defined as how Student was able to feel their body (joints and muscles) and move their body in a gradual motion within their environment.

Lee selected five standardized tests for her assessment;

1. the Bruininks-Oseretsky Test of Motor Proficiency 2nd Edition,
2. Beery-Buktenica Development Test of Visual-Motor Integration 6th Edition,
3. Sensory Processing Assessment 2nd Edition home form,
4. Sensory Processing Assessment 2nd Edition school form, and the
5. Student Functional Assessment.

In order to comply with the requirements to include a variety of assessment procedures, Lee included clinical observations of Student in the testing room, lunch time, classroom, and playground school settings.

The Bruininks-Oseretsky of Motor Proficiency 2nd Edition test was comprised of two subtests to assess Student's fine and gross motor control skills. Lee tested Student by having her draw, or color different geometric shapes for fine motor precision, fine motor integration, and manual dexterity. Lee gave credible testimony when explaining the decision not to test Student in the areas of upper-limb coordination, speed, agility, and body coordination because Student demonstrated age-appropriate or above age-appropriate functions with the playground structures. Lee credibly explained at hearing how Student was observed using the upper extremities of the body, and was able to balance, and displayed proper posture without difficulties while manipulating the monkey bars, the balance stones, and other playground equipment.

The Beery-Buktenica Developmental Test of Visual Motor Integration test analyzed Student's eye-hand coordination. The assessment tool produced information regarding Student's eye-hand coordination. The test consisted of Student copying a sequence of geometric forms and matching and tracing shapes.

The School Function Assessment analyzed Student's performance of functional tasks and activities that support participation in the school setting. This assessment tool identified the strengths and the needs in important non-academic functional tasks for students with disabilities. The test was completed by Student's classroom teacher, Rodriguez. The assessment focused on Student's participation levels, whether class supports were required, and the

- level of performance when traveling the campus,
- recreational movement,

- eating and drinking,
- clothing management, and
- manipulation movements performance level.

The last two standardized tests were the Sensory Processing Measure 2nd Edition. Parent received a questionnaire to assess Student's sensory responses at home, and Rodriguez, for school. Student's sensory processing, vestibular system, proprioceptive awareness, praxis, and sensory modulation were assessed.

Lee's assessment included non-standardized assessments. Lee observed Student in the playground, classroom, lunch time, and testing room settings for a duration ranging from 15 to 45 minutes. The observations captured student's skills as it related to each testing objective of

- sensory processing,
- tactile,
- praxis,
- motor skills,
- vestibular processing,
- visual perception, and
- proprioceptive awareness.

Lee testified confidently about the Student's functional abilities to interact, learn, understand, and navigate as observed during each observation setting. Lee selected age-appropriate testing materials to gather information concerning Student's occupational therapy abilities. During the observations, Student's gross motor, sensory integration,

tactile, praxis, vestibular processing, and proprioceptive awareness skills were observed. Lee observed Student having age-appropriate or above age-appropriate skills regarding speed, agility, and body coordination regarding upper limbs.

The evidence showed that Lee appropriately conducted the observations based on her knowledge, skills, and expertise as an occupational therapist. The observations gathered credible and relevant information about Student's levels of participation and functional abilities in the educational setting. Lee conducted each standardized test according to the publisher's instructions and each assessment test was used for its intended purpose. The test included a variety of tasks performed in a variety of school settings to assess Student's performance of functional activities in the school setting. Overall, Lee selected and administered comprehensive assessment tools and strategies used to gather relevant functional information about Student. Parent input was incorporated into the assessment selections. Each assessment tool provided relevant information that would assist the individualized educational plan team members. Lee relied on her professional judgment to select instruments that were technically sound to assess the relative functional abilities. Overall, Lee used a variety of assessment tools and strategies that were comprehensive and technically sound.

THE ASSESSMENT WAS CONDUCTED IN ENGLISH AND IN AN NON-DISCRIMINATORY MANNER

Generally, school districts must select and administer assessment materials in the student's native language and in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless not feasible. (34 C.F.R. § 300.304, subd.(c)(1); Cal. Educ. Code, § 56320, subd. (b)(1).)

Under the Code of Federal Regulations, native language is defined, with respect to a student who is limited English proficient, as the language of the parents except that, in all direct contact with the child, including evaluation, it means the language normally used by the child in the home or learning environment. (34 C.F.R § 300.29)

Legally compliant assessments are conducted by qualified assessors who select valid, reliable assessment instruments, and other means of evaluation, that avoid discrimination on the basis of sex, race, or culture. The assessments must be administered according to the assessment producer's instructions, in a language and form most likely to yield accurate results regarding the student's academic, developmental and functional abilities. (20 U.S.C. § 1414 (b)(3)(A); Ed. Code § 56320, subd. (a) and (b)(3).)

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).)

Although Student's native language was Spanish, Student had a history of communicating in English during the school learning environment. Lee conducted the initial occupational therapy assessment in English in 2021. Two years later, September 2023, Anaheim shared with Parent Student's English Language Proficiency Assessment results for California regarding Student's 4th-grade proficiency test. This was a statewide test to measure English proficiency. Student scored a level two on the overall rating of proficiency which represented somewhat developed. Student scored a level three for Oral Expression which represented moderately developed. The September 2023

assessment plan was drafted contemporaneously with the English Proficiency Assessment. Additionally, during this assessment, Lee testified that Student communicated in English as they built a rapport with each other. Both Bernal and Lee testified persuasively that Student had a history of understanding and communicating in English at school. Therefore, English was the proper language to conduct the occupational assessment.

Lee gave compelling testimony about Student's appropriate responses to the instructions for each assessment. Lee gave credible testimony that Student did not have any negative responses or reactions, such as being offended or embarrassed during the assessment. The test questions and the methods that Lee used for each assessment did not include any topics of race, culture, and gender. Therefore, Anaheim appropriately conducted its assessments in a non-discriminatory manner.

THE ASSESSMENT REPORT WAS LEGALLY COMPLIANT

It is the duty of the team, not the assessor, to determine whether a student is eligible for special education and related services. (20 U.S.C. § 1414(b)(4)(A); 34 C.F.R. §§ 300.305(a)(2)(iii)(A) & (B)(2007); 300.306(a)(1)(2017). To aid the IEP team in determining eligibility, 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).) The report must be given to the parent or guardian. (34 C.F.R. § 300.306(a)(2)(2017); Ed. Code, § 56329, subd. (c).) Normally, an assessment must be completed within 60 days of the receipt of parental consent. (34 C.F.R. § 300.301(c)(1)(i), (ii) (2007); see Ed. Code, § 56302.1(a).)

Lee administered the occupational assessment on December 12, 2023, January 12, 2024, and January 18, 2024. The report detailed Lee's findings, explanations, and observations regarding Student's need for occupational therapy services. The occupational assessment report contained sufficient data and information as well as the basis for the individualized educational plan team to determine whether Student needed additional services for occupational therapy.

Lee's assessment report contained three typographical errors. First, Lee indicated Student's primary eligibility for special educational services was Speech and Language Impairment by mistake. The correct eligibility was Specific Learning Disability. The second error was a typo in the introductory paragraph describing the Manual Coordination Composite for the Bruininks-Oseretsky Test of Motor Proficiency on page 5. The incorrect wording stated, "Total Motor Composite". Lee corrected the error at hearing and confidently testified that the findings and the test results appropriately related to "Manual Coordination". In the School Function Assessment section, Part II Tasks Supports, pages 9 and 10, Lee used the wrong numerical values to describe the Criterion Cut-Off Score as noted in the fourth column, with the exception of Manipulation with Movement area. In the Basic Level Interpretation section on page 10, Lee's detailed and credible testimony supported the findings that Student had no limitations in participation and did not have an increased need for support. Lee testified in a straight-forward manner regarding the errors and the corrections. Therefore, I find that the errors were minor in nature and did not make a substantial impact to the findings and conclusions in the assessment report.

Lee's assessment report included the background, data, evaluation results, observations, and a summary that supported Lee's conclusion that new services for occupational therapy were not warranted at this time. At hearing, Lee testified

unwaveringly that the conclusions were competent, reliable, and accurate.

Lee testified confidently that the assessment report was a helpful tool for the individualized educational team to use for their discussions. Overall, Lee's testimony was credible, and therefore, the assessment report met the legal requirements for the content to be legally compliant.

Bernal testified competently regarding the procedural requirements concerning the assessment report. Student received the occupational assessment report and held an individualized educational plan team meeting on January 22, 2024. After considering Anaheim's winter break from December 16, 2023 to January 5, 2024, Student timely received a copy of the occupational assessment report within the 60-day requirement. Therefore, the assessment report met the procedural legal requirements. Overall, the assessment report was legally compliant as it related to the substantive and procedural requirements.

PARENT'S ARGUMENTS WERE NOT PERSUASIVE

Student objected to Lee's professional judgment concerning the manner in which Lee conducted the assessment. Student contended that Parent input was not included in the assessment process. However, Bernal's testimony along with the evidence corroborated that Anaheim expanded the scope of the assessment plan to include some additional areas that Parent requested. Lee's testimony established that Parent input was noted in Student's Occupational Profile section of the assessment report, that Parent received the Sensory Processing Measure 2nd Edition for home to rate Student's sensory processing, and that Parent's concerns that were stated in the medical history forms were included in the assessment report. The evidence and

Lee's testimony weighed credibly in favor of finding Parent input was included in the assessment report. Therefore, Anaheim overcame Student's contentions regarding Parent input.

Student also challenged Lee's strategy of resolving the difference of the scores for the Sensory Processing Measure 2nd Edition home and school. At hearing, Lee discussed the finding that Parent rated Student's sensory processing in the "severe difficulties" range for the majority of the testing areas. However, Rodriguez rated Student's sensory processing in the "typical" range for the majority of the testing areas. Lee noted the discrepancies and applied a practical means of resolving the differences by relying on the clinical observations. The clinical observations provided insights to Student's functional abilities and sensory participation during the school environment. The clinical observations provided a variety of situations in which Student was observed. Student was observed when alone and interacting with the teachers and peers. Student was observed performing a variety of movements and tasks under a structured and an unstructured setting. These observations provided a multiplicity of data for Lee to use to resolve any discrepancies, not just between Parent and teacher. Therefore, Lee appropriately placed more weight on the clinical observations which resulted in a finding that teacher's ratings were more accurate. Overall, Lee appropriately resolved the differences between Parent and teacher in an appropriate and reasonable manner to obtain a fair and unbiased conclusion for the Sensory Processing Measure 2nd Edition assessment.

Next, Student contended Lee erred in applying her professional judgment by not interviewing Student during the assessment. At hearing, Lee explained that it was not appropriate for Student to be interviewed for the Sensory Processing Measure 2nd

Edition, as the home assessment tool was for ages 12 and older. Due to Student's age, Lee did not have an obligation to interview Student. Lee testified convincingly that each standardized test instructions did not require Student or Parent to be personally interviewed. Student did not present any evidence of having a unique circumstance that required a personal interview. The weight of Student's testimony about having issues with the odors, taste, sitting-up posture, and feeling tired was not compelling enough to overcome the burden of proving the lack of an interview made the assessment report unreliable or not legally compliant.

Lastly, Parent contended that several occupational therapy areas were missing when conducting the assessment. Parent testified on Student's behalf that the scope of the occupational therapy assessment tests lacked the following new and necessary areas. These areas included were:

- Space Visualization
- Figure Ground
- Standing and Walking Balance
- Design Copying
- Postural Praxis
- Bilateral Motor Coordination
- Praxis on Verbal Command
- Constructional Praxis
- Post Rotary Nystagmus
- Motor Accuracy
- Sequencing Praxis
- Oral Praxis
- Manual Form Perception

- Kinesthesia
- Finger Identification
- Graphesthesia
- Localization Tactile Stimuli

Student did not offer an expert to testify whether the scope of these assessment areas was necessary for the assessment report to be legally compliant. Instead, Parent testified on behalf of Student as a lay witness. Parent failed to show that these specific assessment areas were necessary to determine Student's educational needs in occupational therapy. Parent's testimony was insufficient to impeach Lee's credibility in deciding what areas to assess and how to conduct the occupational therapy assessment. On the other hand, Lee's testimony about the scope, how to conduct the assessment, and the assessment report was complete and thorough. Therefore, Student did not show that these additional areas should have been included in the scope of the assessment tests and overall, in the assessment report.

Overall, the weight of Student's testimony was not compelling to discredit Lee's judgment as an assessor with nine years of experience of assessing over 200 students.

OCCUPATIONAL THERAPY ASSESSMENT REPORT WAS TIMELY
PRESENTED TO PARENTS. ANAHEIM FILED A TIMELY DUE PROCESS
REQUEST FOR HEARING

When a student requests an independent educational evaluation, the public agency must, without unnecessary delay, either file a request for a due process hearing to show that its assessment is appropriate or ensure that an independent educational assessment is provided at public expense. (34 C.F.R. § 300.502(b)(2); (b)(2)(i), (ii) (2006);

see Ed. Code, § 56329, subd. (c).) The regulations do not set a specific time limit for responding to a parent's request for an independent educational evaluation. Whether a district's delay is unnecessary within the meaning of the above regulation is a fact-specific inquiry. (See *Pajaro Valley Unified School Dist. v. J.S.* (N.D. Cal. Dec. 15, 2006, C06-0380 PVT) 2006 WL 3734289, p. 3.)

The term "unnecessary delay" as used in 34 C.F.R. § 300.502(b)(2) is not defined in the regulations. It permits a reasonably flexible, though normally brief, period of time that could accommodate good faith discussions and negotiations between the parties over the need for, and arrangements for, an independent evaluation. (Letter to Anonymous, 56 IDELR 175 (OSEP 2010).) Some delay in the provision of an independent educational evaluation is reasonable if the school district and the parents are engaging in active communications, negotiations, or other attempts to resolve the matter. (*J.P. v. Ripon Unified School Dist.* (E.D. Cal. April 14, 2009, No. 2:07-cv-02084) 2009 WL 1034993.) *L.S. v. Abington School Dist.* (E.D. Pa. Sept. 30, 2007, No. 06-5172) 2007 WL 2851268 (district's 10-week delay in filing a due process request was not a per se violation where there was evidence of ongoing efforts during that time to resolve the matters and district, within 27 days of the independent evaluation request, orally told parents the request would be denied).)

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As held above, Parent received a timely copy of the occupational therapy assessment report on January 22, 2024, and Anaheim held a timely individualized educational plan team meeting to discuss the results of the occupational therapy assessment report. During this meeting, Parent shared disagreements with Lee's assessment results and requested an independent educational occupational therapy evaluation at public expense. Overall, Anaheim complied with the procedural requirements by producing a written report to parent on January 22, 2024, and by holding an individualized educational plan team meeting that same day. Anaheim held the individualized educational plan meeting within 60 days of when Parent consented to the occupational therapy assessment plan.

On February 2, 2024, Bernal sent Parent a prior written notice in Spanish translations, denying Parent's request for an independent evaluation for occupational therapy. The prior written notice stated that if Parent did not withdraw their request by February 16, 2024, Anaheim intended to file a due process request with OAH. Parent did not withdraw their request and Anaheim filed a request for due process hearing on February 21, 2024.

Anaheim filed its request for due process in a timely manner on February 21, 2024. Bernal testified in a forthright manner that Anaheim did not engage in any delays before sending the prior written notice to Student. Bernal's testimony substantiated a finding that Anaheim engaged in a reasonably flexible, and brief period of time needed to accommodate the good faith discussions and negotiations between the parties regarding withdrawing Student's request for an independent evaluation. Overall, Anaheim complied with the laws concerning filing a timely due process request.

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.

ISSUE 1:

Anaheim conducted and prepared a legally compliant January 18, 2024 occupational therapy assessment and report, such that Student was not entitled to an independent educational occupational therapy evaluation at public expense.

Anaheim prevailed on Issue 1.

REMEDIES

Federal courts have broad latitude to fashion appropriate equitable remedies for violation of the IDE. The authority to order such relief extends to hearing officers. Normally remedies are issued to redress denials of faith. Hearing officers do have, however, authority to remedy purely procedural violations of the Act.

Equitable relief is granted here to make sure that the error in the eligibility for special education services, the BOT-2, and SFA-manipulation with movement Criterion Cut-Off Score sections of the final version of the occupation therapy assessment does not lead to future procedural violations of the IDEA by the distribution of incorrect information.

ORDER

1. Anaheim's January 18, 2024 occupational therapy assessment and report met legal requirements. Parent is not entitled to an independent educational occupational therapy evaluation at public expense.
2. Anaheim shall take all reasonable steps to ensure that the final version of the occupational therapy assessment is not distributed to anyone while still containing the erroneous reference regarding the eligibility for special educational services on page 2, under the Background Information section; the Bruininks-Oseretsky Test of Motor Proficiency that erroneous includes the language, "Total Motor Composite" on page 5; and the evaluation errors in the School Functional Assessment, on page 9, the fourth column entitled, "Criterion Cut-off Score", with the exception of "Manipulation with Movement." Anaheim shall produce a final version of the occupational therapy assessment that removes the reference to any erroneous information and correct the information. Anaheim shall enter the corrected assessment in the special education information system or other special education filing for reporting system. Anaheim shall recall and destroy all copies of the final assessment containing the erroneous information in his possession or control and shall ensure that no copy of the final assessment containing the inaccurate information is maintained in the special education information system or other special education filing or reporting system.

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.

Thanayi Lindsey
Administrative Law Judge,
Office of Administrative Hearings