

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

ANAHEIM ELEMENTARY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2025010611

DECISION

MARCH 21, 2025

On January 21, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Anaheim Elementary School District, naming Parent on behalf of Student. Administrative Law Judge Judith Pasewark heard this matter by videoconference on February 11 and 12, 2025.

Attorneys Joshua Walden and Betzy Bras-Gonzalez represented Anaheim Elementary. Senior Director of Special Services and Special Education Local Area Plan Kristin Cinco and Program Specialist Stephanie Bernal attended the hearing on Anaheim Elementary's behalf. Parents did not attend the hearing.

At Anaheim Elementary's request, the matter was continued to March 3, 2025, for a written closing brief. The record was closed, and the matter was submitted on March 3, 2025.

ISSUE

May Anaheim Elementary assess Student in academic achievement, health, intellectual development, and social-emotional/behavior pursuant to the January 17, 2025 assessment plan without parental consent?

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 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 Elementary had the burden of proof in this matter. 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 12 years old and in sixth grade at the time of hearing. Student resided within Anaheim Elementary's geographic boundaries at all relevant times.

ISSUE: MAY ANAHEIM ELEMENTARY ASSESS STUDENT IN ACADEMIC ACHIEVEMENT, HEALTH, INTELLECTUAL DEVELOPMENT, AND SOCIAL-EMOTIONAL/BEHAVIOR PURSUANT TO THE JANUARY 17, 2025 ASSESSMENT PLAN WITHOUT PARENTAL CONSENT?

Anaheim Elementary contends Student's reassessment for special education eligibility and related services is necessary because:

- Student's three-year assessment was overdue as of January 2025;
- Anaheim Elementary had never assessed Student; and

- Father expressed a desire that Student no longer receive special education services but failed to provide a written revocation of consent to special education and the individualized education program, called IEP, team cannot consider termination of Student's eligibility for services without current data obtained through the assessments contained in the October 2, 2024 assessment plan, as revised in the January 17, 2025 assessment plan.

BACKGROUND

FAPE means special education and related services that are available to an eligible child that meets 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); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363, subd. (a); 34 C.F.R. §§ 300.320, 300.321, and 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. 386, 402 [137 S.Ct. 988, 1000].)

An assessment of the student's educational needs must be conducted before any action is taken to place a student with exceptional needs in a special education program. (20 U.S.C. § 1414(a)(1)(A); Ed. Code, § 56320.) An assessment may be initiated

by request of a parent, a State educational agency, other State agency, or local educational agency. (20 U.S.C. § 1414(a)(1)(B); Ed. Code, §§ 56302, 56029, subd. (a), 56506, subd. (b).) The IDEA uses the term “evaluation,” while the California Education Code uses the term “assessment.” (20 U.S.C. § 1414; Ed. Code, § 56302.5). As used in this Decision, the terms “assessment” and “evaluation” mean the same thing and are used interchangeably.

Student previously resided with Mother and attended kindergarten through fourth grade in the Chino Valley Unified School District, between 2017 through the end of the 2022-2023 school year. Student qualified for special education and related services under the categories of other health impairment and specific learning disability since 2017.

On February 18, 2022, Chino Valley completed a three-year psychoeducational assessment of Student. Pursuant to the assessment plan, Chino Valley assessed Student in academic achievement, health, intellectual development, and social-emotional behavior. Mother consented to the assessment plan. Student was in the third grade at the time of this assessment.

The Chino Valley assessment report noted that Student’s school attendance was unsatisfactory. Student had 44 tardies and 14 absences in the second grade; 39 tardies and 13 absences in the first grade, and 21 tardies and 13 absences in kindergarten.

A resource specialist conducted academic assessments and observations which reported Student remained focused for 15 to 20 minutes but required a few breaks within an hour. Student’s level of attending and overall stamina declined over time, even with breaks.

Student's reading and decoding skills were in the average range; however, his reading comprehension was in the low average range.

Student's writing skills were inconsistent. He demonstrated difficulty with capitalization and punctuation. Writing fluency and written expression scores were both in the below average range.

Student's math skills were generally in the average range. Student scored in the average range in math computation, math concepts and applications, and word problems. Student scored in the below average range for math symbols and concepts, and math in everyday life.

A school psychologist conducted Student's psychoeducational assessments. Student's cognitive assessments revealed average psychological processing aptitudes. Student demonstrated processing deficits in attention and fluid reasoning. Student demonstrated average skills in most academic areas, excepting a deficit in written expression. Student's social-emotional functioning described a happy child with friends, who liked to participate in class. Mother and teacher indicated elevated concerns in inattention, hyperactivity, and impulsivity. Student exhibited difficulty focusing and following directions, and disorganization in his work, often needing redirection to task. This, coupled with Student's processing disorder in attention, suggested that Student continued to meet eligibility requirements for other health impairment. Further, Student's attention and fluid reasoning deficits continued to impact Student's academic progress in written expression.

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The school nurse completed the health and developmental assessment. Student's health was good with no history of serious illness, injury or hospitalization. Student's vision was within normal limits with glasses, and he passed the hearing screening.

On February 18, 2022, Chino Valley held Student's IEP team meeting to review results from the three-year review assessments. The IEP team determined Student's present levels based upon the information contained in the 2022 psychoeducational assessment. The IEP team developed goals in:

- reading comprehension,
- written expression,
- math problem solving, and
- on-task organization.

These goals were supported by placement in the general education classroom with 180 minutes per week of pull-out specialized academic instruction with a special education teacher in the resource classroom and 120 minutes per week of push-in specialized academic instruction. A series of accommodations were created to address Student's attention, focus, and organizational needs.

Mother consented to the IEP in full. Father did not participate in Student's assessment or the IEP process at Chino Valley.

Student subsequently moved to Father's residence within the boundaries of Anaheim Elementary. On May 26, 2023, Father enrolled Student in Anaheim Elementary for the 2023-2024 school year.

On August 15, 2023, Anaheim Elementary created an interim placement IEP based upon the February 18, 2022 Chino Valley IEP. Father consented to the interim IEP.

On September 18, 2023, during a parent-teacher conference, Father informed Student's general education teacher Stephanie Ingram that he was not in agreement with continuing Student's resource specialist program services.

REASSESSMENT

A reevaluation must meet the same requirements as a preplacement evaluation (34 C.F.R. §§ 300.304 through 300.311.) Therefore, in this Decision, a reference to an assessment is the same as a reassessment or reevaluation.

A public agency must ensure that a reevaluation of a child with a disability is conducted if the agency determines that the educational or related services or needs, including improved academic achievement and functional performance of the child warrant a reevaluation. (20 U.S.C. § 1414(a)(b) and (c); 34 C.F.R. § 300.303 (a); Ed. Code, § 56381, subd (b)(2)(D).)

A reevaluation must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. (34 C.F.R. § 300.303 (b).)

A reassessment may not be conducted, unless the written consent of the parent is obtained prior to the reassessment, except pursuant to subdivision (e) of Section 56506. (Ed. Code, § 56381, subd (f)(1).)

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It is well settled that parents who want their child to receive special education and related services must allow reassessment by the school district, with assessors of the school district's choice. (*Johnson v. Duneland School Corp.* (7th Cir. 1996) 92 F. 3d 554, 558.)

At hearing, the local education authority must establish that the proposed assessments are necessary and that it is lawfully entitled to conduct them. (34 C.F.R. § 300.300 (c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3) and 56506, subd. (e).)

On October 24, 2023, Education Specialist Jessica Hodgson emailed both Mother and Father informing them of Student's upcoming three-year reevaluation. Hodgson explained that a reevaluation was necessary to determine if Student still qualified for special education. Once the testing was completed, Anaheim Elementary would follow up with an IEP team meeting to discuss the assessment findings, including termination of special education services. An assessment plan, as well as a copy of parental procedural safeguards was attached to the email. A hardcopy of the assessment plan was also sent home with Student.

ASSESSMENT PLAN REQUIREMENTS

Decisions regarding areas to be assessed are driven by the suspected needs of the child. If a child's behaviors or physical status is of concern, evaluations addressing these areas must be conducted. (71 Fed. Reg. 46,643 (2006).)

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As part of a reassessment, the IEP team, and other qualified professionals, as appropriate, shall consider whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the IEP, and to participate in the general curriculum. (34 C.F.R. § 300.305 (a)(2)(iii)(iv); Ed. Code, § 56381, subd (b)(2)(D).)

The law requires that assessments shall be conducted by persons competent to perform the assessment as determined by the local educational agency. (Ed Code, § 56322.) Any psychological assessment of pupils shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324, subd. (a).)

The assessment plan was first presented to Parents on or about October 2, 2024. Anaheim Elementary prepared a standard assessment plan utilized through its Special Education Local Plan Area.

The purpose of the three-year assessment was to determine whether Student continued to have a qualifying disability which required special education and related services, his present levels of academic achievement and related developmental needs, and whether any additions or modifications to his IEP were needed to allow Student to participate in the general education curriculum. (34 C.F.R. § 300.305 (a)(2).)

The Anaheim Elementary assessment plan included a description of the proposed assessment, and explained the assessments were needed to determine Student's continued eligibility for special education and present levels of academic performance and functional achievement. The assessment plan explained that Parents' written permission must be given before assessment.

The assessment plan stated the assessments would be conducted by qualified staff and reiterated the statutory requirements for conducting assessments pursuant to title 20 of the United States Code, sections 1414(a)(2)(b) and (c), and Education Code sections 56320 and 56381, subdivision (e).

Anaheim Elementary assigned program specialist Shirley Diaz to conduct Student's psychoeducational assessment. Diaz held a master's degree in school psychology, a pupil personnel services credential, and behavior intervention case manager certification. Diaz presented as an excellent witness, with extensive experience, overseeing five schools and having conducted at least 500 psychoeducational assessments. Diaz was qualified to conduct Student's psychoeducational assessment, including cognitive, social-emotional and behavioral assessments.

Anaheim Elementary assigned resource teacher Hodgson to conduct Student's academic achievement assessment. Hodgson held a master's degree in education along with level one and level two credentials as an educational specialist for mild to moderate disabilities. Hodgson testified at hearing and presented as a well-versed educator who was qualified to conduct Student's academic assessment.

Anaheim Elementary scheduled school nurse George Gonzalez to conduct Student's health assessment. Gonzalez, a credentialed school nurse, held a master's degree in nursing, and was responsible for conducting all health screenings and assessments for Anaheim Elementary.

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The informed involvement of parents is central to the IEP process. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, 524 [127 S.Ct. 1994].) However, a parent need not have an in-depth understanding of all of the services a child's IEP might provide or every aspect of a proposed evaluation. Rather, for consent to be "informed" the parent must merely have a general understanding of the activity for which she is providing consent. (*Letter to Johnson* (U.S. Dept. of Educ., Office of Special Education Programs (OSEP) June 3, 2010).)

The purpose of the assessments was to determine whether Student required special education services in the educational setting. The broad language contained in the assessment plan sufficiently informed Parents of the areas to be assessed, and the credentials required to administer the assessments. Parents were entitled to no more. Anaheim Elementary met its burden of proof to establish that the assessment plan complied with all legal requirements to provide Parents with sufficient information to allow informed consent.

Although Father disagreed with further assessing Student, the assessment plan itself met all statutory requirements for an appropriate assessment plan. The fact that Father did not provide consent did not negate the procedural validity of the proposed assessment plan or eliminate Anaheim Elementary's obligation to conduct appropriate assessments in all areas of suspected disability. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2007) 464 F3d. 1025, 1031-1033.)

AREAS OF NEED FOR ASSESSMENT

The assessment plan stated that to meet Student's individual education needs, Anaheim Elementary proposed to assess Student in academic achievement, health, intellectual development, and social-emotional/behavior. The assessment plan contained standard statutory language describing the assessments which indicated the tests and procedures conducted pursuant to these assessments, which included but were not limited to:

- classroom observations
- rating scales
- interviews
- record review
- one-on-one testing, or some other types or combination of tests.

The assessment plan determined the same areas of need as assessed in the previous Chino Valley assessment plan, which explored Student's known areas of concern. Anaheim Elementary had yet to conduct any formal assessments of its own. Reassessment in these same areas would provide Anaheim Elementary with new comparative information regarding Student's progress and would assist in determining Student's present levels of academic performance.

During the January 17, 2025 IEP team meeting, which Father attended, Ingram reported Student's reading and math skills at near grade level. Interim Assessment Block assessment results indicated near standard reading proficiency. STAR testing in

Student's past performance to his current abilities. Diaz opined that Student's prior poor school attendance could be related to characteristics of specific learning disability or other health impairment.

Diaz noted the Chino Valley assessment was conducted in 2022 with COVID-19 restrictions in place, including virtual testing, which created an artificial testing environment. Masks alone could impact the validity of test results, especially for children with suspected attention problems.

Given the more recent reports of Student's sadness, Diaz wanted to further investigate Student's social-emotional needs, specifically with Student's self-reporting on assessments. This was an area of assessment which had not been explored in the 2022 Chino Valley assessment.

Further, Student was scheduled to matriculate to middle school at the end of the 2024-2025 school year, which would involve transferring to another school district. Anaheim Elementary needed to hold a "fly-up" or transition IEP team meeting prior to the end of the school year to prepare Student for the transition, and to share information, including assessment information, with the receiving high school district.

The assessment plan sought to reassess Student in health. Student's last health assessment from Chino Valley in 2022, provided only general recommendations, such as healthy eating suggestions. Although Student's health was not a known area of need, Anaheim Elementary needed a health update regarding any changes in Student's general health and medications, if any. School nurse Gonzalez opined the health assessment was required to determine if Student's health impacted his educational performance.

Anaheim Elementary met its burden of proof to establish that the assessment plan sought to assess Student in his areas of suspected need. The assessments in academic achievement, intellectual development, and social-emotional/behavior were known areas of need, based upon prior assessments; however, Student's most recent assessments were conducted in another school district in 2022. Based upon Student's near grade-level performance in academics, Anaheim Elementary required new data to determine whether Student continued to qualify for special education, and if so, what his current needs were, given his academic progress. Student's teachers concurred that reassessment was needed. Further, Father's desire to exit Student from special education required the IEP team to review current information to determine if termination of services was appropriate.

CONSENT OVERRIDE

If parents do not consent to the reassessment plan, the school district may request permission to assess without parental consent by showing at a due process hearing that it is unable to obtain parental consent to needed evaluations. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii)(2006); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

Further, parents who wish that their child receive special education services under the IDEA must allow reassessment if conditions warrant. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F. 2d 1307, 1315.) The parent of a child with a disability does not have veto power over the IEP process. (*Ms. S. ex rel. G. v Vashon Island School Dist.* (9th Cir. 2003), 337 F.3d 1115, 1131.)

Informed parental consent need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain consent; and the child's parent failed to respond. (34 C.F.R. § 300.300 (c)(2)(i)(ii).)

The evidence supports a finding that Anaheim Elementary made reasonable attempts to obtain parental consent to the assessment plan.

On October 24, 2024, Hodgson sent both Mother and Father a follow-up email regarding the assessment plan requesting that they return the signed document as soon as possible.

On October 29, 2024, Father informed Student's teacher that Student no longer required special education. This message was relayed to Hodgson, who responded to Father in a detailed voice message which outline the options in the assessment plan, including Parents' right to decline assessment.

On November 18, 2024, vice principal Lori Nash texted Father to inquire about the assessment plan. Nash informed Father he could sign to move forward with the assessment or decline testing as indicated on the assessment plan.

On November 24, 2024, Diaz mailed both Mother and Father a prior written notice regarding the assessment plan. The prior written notice indicated that Anaheim Elementary still required Parents' written consent to the assessment plan dated October 2, 2024, to determine Student's present levels of functioning, to determine the need for an offer of FAPE, and to avoid the need to consider alternative options available to secure consent.

The prior written notice informed Parents that Anaheim Elementary had the right to assess whether a child requires special education and to request a due process hearing to pursue the evaluation. If Anaheim Elementary did not receive permission to evaluate Student, Anaheim Elementary could pursue alternatives to secure consent, such as filing a request for due process hearing to gain consent to assess.

Diaz offered to meet with Parents to discuss their concerns and included a duplicate of the assessment plan and parental procedural safeguards with the letter.

On December 6, 2024, principal Deanna Pelasky, spoke with Father in person, and told him another copy of the assessment plan would be sent home to him. On December 9, 2024, Father returned the signed assessment plan, indicating he did not consent to the proposed assessment. Mother did not respond to the request for consent to assess.

Anaheim Elementary in one last attempt to obtain consent, discussed with Father the need for Student's assessment at the January 17, 2025 IEP team meeting. The IEP team presented a revised assessment plan, dated January 17, 2025 to Father. The January 17, 2025 assessment plan was identical to the October 2, 2024 assessment plan, with one exception. The January 17, 2025 assessment plan included a statement that the reason for the proposed assessment was "in accordance with state and federal guidelines, an educational evaluation will be conducted as a component of Student's three-year reassessment." Father once again signed the assessment plan indicating he did not consent to the assessment plan.

On February 4, 2025, Anaheim Elementary provided both Mother and Father with a prior written notice in response to Parents' refusal to provide consent to assess Student. The prior written notice indicated that Father's non-consent to the assessment plan did not constitute a written revocation of consent to special education and related services. Further, although Father signed the January 17, 2025 IEP indicating "I decline the offer of initiation of special education services," the statement was insufficient to constitute a formal revocation of consent, as the IEP was not an initial IEP, but rather an IEP to review the three-year assessment.

The prior written notice also included an explanation of how Parents could effectively revoke consent to special education and related services, along with a copy of parental procedural safeguards which explained the procedures and parental rights regarding revocation of services. To date, neither Mother nor Father has further responded.

Anaheim Elementary established that it made reasonable attempts to obtain parental consent to assess Student, and Father specifically refused consent in writing.

Anaheim Elementary established that the January 17, 2025 assessment plan, procedurally met the requirements of the IDEA. Anaheim Elementary established that Student's reassessment was necessary to meet state and federally mandated reassessment requirements and was needed to allow Student's IEP team to obtain current data to determine Student's eligibility for special education and develop an appropriate educational program for Student. Anaheim Elementary is entitled to reassess Student according to the January 17, 2025 assessment plan.

Anaheim Elementary may conduct assessments in academic achievement, health, intellectual development, and social-emotional/behavior as contained in the January 17, 2025 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.

Anaheim Elementary is entitled to assess Student in academic achievement, health, intellectual development, and social-emotional/behavior pursuant to the January 17, 2025 assessment plan.

Anaheim Elementary prevailed on the sole issue.

ORDER

1. Anaheim Elementary may assess Student pursuant to the January 17, 2025 assessment plan without parental consent.
2. Anaheim Elementary shall notify Parents within 15 business days of this Decision of the days, times, and places Parents shall present Student for assessment.
3. Parents shall cooperate in making Student available for assessments as requested by Anaheim Elementary.

4. Parents shall timely complete and return any documents reasonably requested by Anaheim Elementary as a part of the assessment process.
5. In the event Parents fail to make Student reasonably available for assessment, or materially fail to cooperate in the assessment process, Anaheim Elementary will no longer be required to provide Student with special education and related services.

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.

JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings