

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2019020117

SONOMA VALLEY UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

DECISION

Sonoma Valley Unified School District filed a due process hearing request with the Office of Administrative Hearings on February 4, 2019, naming Parents on behalf of Student. OAH granted a continuance of the matter for good cause on February 25, 2019.

Administrative Law Judge Cynthia Fritz heard this matter in Sonoma, California, on March 26, 2019. Carl Corbin, Attorney at Law, represented Sonoma. Vanessa Riggs, Director of Special Education, attended the hearing on behalf of Sonoma.

No appearances were made on behalf of Student at the hearing.<sup>1</sup>

---

<sup>1</sup> Mr. Corbin represented that Mother contacted his office on March 22, 2019, requesting a one-day continuance due to a family medical issue. His office informed Mother that she would need to contact OAH and request a continuance. At the commencement of the hearing, Parents had not requested a continuance through OAH. The start of the hearing was delayed to allow additional time for Parents to appear. After 20 minutes, during which an unsuccessful attempt was made to contact Parents by

On March 26, 2019, following Sonoma's presentation of evidence and oral closing argument, the record was closed, and the matter was submitted for decision.

## ISSUE

Were Student's psychoeducational and academic assessments conducted by Sonoma and reviewed at individualized education program team meetings on October 4, 2018, and November 29, 2018, legally compliant such that Student is not entitled to independent educational evaluations at public expense?

## SUMMARY OF DECISION

This Decision finds Sonoma's psychoeducational and academic assessments of Student failed to meet the legal requirements as prescribed by the Individuals with Disabilities Education Act and California Education Code. Sonoma failed to establish by a preponderance of the evidence that it obtained Parents' consent prior to conducting the assessments. Accordingly, Sonoma did not establish the assessments conducted comported with a consented-to assessment plan. Thus, Student is entitled to independent psychoeducational and academic assessments at Sonoma's expense.

## FACTUAL FINDINGS

1. Student is a 13-year-old male residing with his Parents within Sonoma's residency boundaries. Sonoma assessed Student in 2015 and found him eligible for special education under the category of specific learning disability.

2. Student attended a Sonoma middle school during the 2017-2018 school year, and was due for his triennial assessments in May 2018. On March 1, 2018, Lisa  

---

telephone, the hearing was commenced and completed on the same day.

Mertens, school psychologist, drafted Student's assessment plan and proposed testing Student's academic achievement, intellectual development, motor development, social emotional/behavior and health.

3. During March and April of 2018, Ms. Mertens sent an assessment plan to Parents multiple times by mail and email to obtain parental consent. Additionally, Ms. Mertens met with Mother in April of 2018 to obtain her consent for the assessments. Mother expressed concern that Student would be ineligible for special education if tested, and did not consent to the assessment plan. Subsequently, Ms. Mertens contacted the special education director, Nikarre Redkoff, for assistance obtaining parental consent.

4. In April 2018, Ms. Mertens was informed by Ms. Redkoff that Mother had consented to the assessment plan and she could proceed with testing. Ms. Mertens did not testify that she saw the allegedly consented-to assessment plan but relied upon Ms. Redkoff's representation that consent had been obtained. On April 29, 2018, Ms. Mertens emailed Mother regarding Student's testing schedule but did not confirm that she consented to the assessments. At hearing, Ms. Mertens estimated Mother's consent was received in late April 2018, based on her recollection, although she had no personal knowledge of Mother's consent.

5. Anee Alioto, Sonoma special education resource teacher, proceeded with Student's academic testing with the understanding that Mother consented to the assessment plan. She was involved in neither the development of the assessment plan nor acquiring parental consent to it. She did not testify that she saw the allegedly consented-to assessment plan.

6. Sonoma failed to offer a signed assessment plan into evidence. Further, the former special education director, Nikarre Redkoff, was not called as a witness, and Ms. Mertens and Ms. Alioto had no personal knowledge of Mother's consent to the

assessment plan. Neither parent appeared at hearing and were not called to testify regarding whether consent was provided. Additionally, as no consented-to assessment plan was presented into evidence, even had consent been obtained, Sonoma was not able to establish that the assessments conducted comported with the assessment plan.

7. Ms. Mertens and Ms. Alioto proceeded to assess Student and presented their findings at the October 4, 2018, and November 29, 2018, IEP team meetings. On November 29, 2018, Sonoma team members recommended that Student be exited from special education. Mother, who attended the meeting, did not agree, and requested an independent psychoeducational evaluation at Sonoma's expense.<sup>2</sup>

8. On January 9, 2018, Sonoma denied Mother's request, and filed this action on February 4, 2019, to defend its assessments.

## LEGAL AUTHORITY AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT<sup>3</sup>

1. This hearing was held under the IDEA, its regulations, and California statutes and regulations intended to implement the IDEA and its regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006)<sup>4</sup>; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children

---

<sup>2</sup> The academic and psychological assessments were completed separately but combined for purposes of evaluating special education eligibility.

<sup>3</sup> The legal citations in this Introduction are incorporated by reference into the analysis of the issue discussed below.

<sup>4</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise stated.

with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

3. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. *Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii). Here, Sonoma is the petitioning party and had the burden of proof on the single issue in the case.

#### PARENTAL CONSENT REQUIREMENT FOR ASSESSMENTS

4. School district evaluations of students with disabilities under the IDEA serve two purposes: (1) identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and (2) helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

5. School districts must conduct a full and individual evaluation before the initial provision of special education and related services. (34 C.F.R. § 300.301(a).) The IDEA provides for periodic reevaluations to be conducted not more frequently than once a year unless the parents and District agree otherwise, but at least once every three

years unless the parent and district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must also be conducted if the local educational agency “determines that the educational or related services needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil’s parents or teacher request 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).)

6. The school district must obtain parental consent before conducting a reevaluation. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1); Ed. Code, §56381, subd. (f)(1).) Within 15 days of a student’s referral for assessment, the school district must provide a proposed assessment plan to the parents. (Ed. Code, § 56321(a).) A copy of the notice of parent’s rights must be attached to the assessment plan. (Id.) The proposed assessment plan must be in a language easily understood by the general public; in the parent’s native language; explain the types of assessments to be conducted; and state that no IEP will result from the assessment without parental consent. (Ed. Code, § 56321(b).)

#### WAS SONOMA’S 2018 PSYCHOEDUCATIONAL AND ACADEMIC ASSESSMENTS LEGALLY COMPLIANT?

7. Sonoma contends that its 2018 academic and psychoeducational assessments complied with all legal requirements under applicable federal and state laws.

8. Sonoma failed to prove that Parents consented to the assessment plan. Here, it was unable to produce a signed assessment plan demonstrating that Parents had agreed to the assessments it now wants reviewed for legal compliance. Additionally, no witness testified to seeing a consented-to assessment plan. Therefore, Sonoma failed to establish it obtained consent. Moreover, to comply with the legal requirements, the

assessment plan must be in a language easily understood by the general public; in the parent's native language; explain the types of assessments to be conducted; and state that no IEP will result from the assessment without parental consent. Without a signed copy, Sonoma failed to establish these components were met. Moreover, without the signed assessment plan, Sonoma cannot establish that the assessments conducted comported with the assessments to which Parents allegedly consented. In light of the forgoing, Sonoma failed to meet its burden establishing the critical threshold procedural protections were provided.

9. Every review of IDEA compliance begins with a determination of whether the district complied with the procedures set forth in the IDEA. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, (1982) 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690. If procedural requirements are not met, there is no need to continue to evaluate other aspects of the case. Sonoma failed to establish it complied with the procedural protections of the IDEA as it was unable to produce evidence of parental consent to the assessments or compliance with the other procedural requirements. As Sonoma failed to establish it complied with this threshold requirement, no substantive evaluation of the conducted assessments is reached.

#### INDEPENDENT EDUCATIONAL EVALUATIONS

10. A parent has the right to obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted by the school district. (34 C.F.R. § 300.502(b)(1); Ed. Code, § 56329(b).) If the school district believes the assessment conducted meets the required standards and an independent educational evaluation is not required at public expense, the school district may initiate a due process hearing to show that its assessment was appropriate. (34 C.F.R. § 300.502(b)(2)(i); Ed. Code, § 56329(c).) If the hearing officer determines the assessment was appropriate, the parent still has a right to an independent educational evaluation, but not at public

expense. (34 C.F.R § 300.502(b)(3); Ed. Code, § 56329(c).)

11. The evidence established that parent disagreed with the assessments Sonoma conducted and requested an IEE at public expense. Sonoma filed for due process seeking to establish that its assessments were legally appropriate. As found above, Sonoma failed to meet its burden establishing it complied with the legal requirements. Accordingly, Student is awarded an independent psychoeducational and academic assessment at public expense.

## ORDER

1. Student is entitled to independent psychoeducational and academic evaluations at Sonoma's expense.

## PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on the single issue presented.

## RIGHT TO APPEAL

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



DATED: April 10, 2019

\_\_\_\_\_  
*/s/*

CYNTHIA FRITZ

Administrative Law Judge

Office of Administrative Hearings