

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

PARAMOUNT UNIFIED SCHOOL  
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent

OAH CASE NO. N 2007030664

DECISION

Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings, Special Education Division, State of California, heard this matter in Paramount, California, on April 19, 2007.

Petitioner, Paramount Unified School District (District), was represented by Kim Cole, Coordinator of Special Education for District.

Student's parents (Mother and Father), represented Student. Student also attended the hearing. Parents' primary language is Spanish. Cristina B. Diaz, a certified translator, was present to translate English into Spanish and Spanish into English.

Petitioner, District, filed this request for due process hearing on March 20, 2007. No continuances were requested. One day was scheduled for hearing, and the record closed on April 19, 2007.

ISSUE

Whether District is entitled to reassess Student in accordance with the Assessment

Plan dated February 26, 2007, over the objection of Student's parents?

## CONTENTIONS

District contends that, although it is in disagreement with Parents' request to exit Student from special education services, it cannot consider exiting Student without further assessment. Parents contend they will not consent to additional assessments or sign any documents regarding special education, as they want Student immediately removed from the special education program. District is requesting an order permitting its proposed reassessment of Student without parental consent.

## FACTUAL FINDINGS

### BACKGROUND INFORMATION

1. Student, a 12-year old sixth grader, attends at Los Cerritos Elementary School within the District. He qualifies for special education under the classification of learning disability.

2. In February 2006, Parents consented to Student's triennial reassessment. A multidisciplinary team conducted a comprehensive psychoeducational assessment of Student, including his then-current functional and academic performance. Parents raised no issues as to the validity of the testing. Cognitive testing on the Wechsler Abbreviated Scale of Intelligence (WASI) confirmed prior testing results placing Student's cognitive potential in the low average to average range, with a mental age of nine years, four months. Student continued to exhibit a significant discrepancy between ability and achievement in basic reading, reading comprehension, and written expression due to deficits in auditory short-term memory and auditory processing skills. The assessment team made several recommendations which were incorporated in the proposed IEP discussed with Mother at the March 10, 2006 IEP meeting.<sup>1</sup> Although Student no longer

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<sup>1</sup> Mother has been assisted by a Spanish language interpreter at each IEP, and

required speech and language services, the IEP team recommended that Student continue in the District's Resource Specialist Program (RSP).

#### REQUEST TO EXIT SPECIAL EDUCATION

3. On September 28, 2006, District held an addendum IEP meeting.<sup>2</sup> Mother attended with the assistance of a Spanish language interpreter. Mother informed the IEP team that Student had not made any progress in the RSP. She requested that Student be exited from all special education services and placed solely in the general education program. Student does not want to be in the special education program. He dislikes being pulled out of class and being identified as a special education student. He has become nervous and unhappy at school. Both Mother and Father adamantly believe that the RSP has not helped Student at all, as the special education level is too low for their son's abilities. Accordingly, Mother did not consent to the IEP.

4. District IEP team members strongly disagreed with Mother and recommended that Student, at a minimum, continue his general education placement with RSP support. All District witnesses, including his current RSP teacher, stressed Student's need for continuing special education. Student exhibits auditory processing deficits which adversely affect his education in the classroom. Student is struggling a great deal in

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Parents have been provided with copies of the March 10, 2006, and September 28, 2006 IEPs which have been translated into Spanish.

<sup>2</sup> Mother was present at the March 10, 2006 IEP meeting. At that time, she requested that Student be placed in the general education setting and no longer receive pull-out services. In order to address Mother's requests, the IEP team agreed to continue the IEP one week to complete Student's goals and create push-in RSP services. Mother signed the IEP, but did not respond to District's attempts to reconvene the IEP meeting until September 2006.

language arts in his comprehension and retention. He demonstrates significant discrepancies in reading and has made minimal progress toward his IEP annual goals.

#### REQUEST FOR REASSESSMENTS

5. Once a child is eligible for special education services, District must reassess that student at least once every three years, or sooner if conditions warrant, unless the parents and District agree that the reassessment is not necessary. District cannot exit a student from special education services without first conducting assessments to determine whether such action is appropriate. Further, parental consent for an assessment is generally required before District can assess a student. District, however, can overcome a lack of parental consent if District prevails at a due process hearing relating to the need to conduct an assessment.

6. District advised Mother that in order to consider her request to exit Student from special education, Student would need to be reassessed to obtain current information regarding his present levels of performance. District sent Parents a formal assessment plan form which was received by Mother on February 2, 2007. Mother acknowledged receipt of the assessment plan and written notice of her parental rights. District gave proper notice to Parents.

7. The assessment plan requested parental consent to reassess Student in the areas of academics, psycho-motor development and perception. The assessment plan was presented in Parents' native Spanish language, and described the assessments District proposed to perform. The proposed assessments are necessary to determine whether Student continues to have a disability and requires special education and related services. In this case, the assessments are also warranted based on Student's poor performance to determine if District should propose modifications to his IEP. Based upon Student's prior assessments and declining academic performance, coupled with Parents' request to terminate special education services for Student, the proposed assessment plan is appropriate.

8. Parents did not sign the assessment plan. Mother sees no need for further testing, and will not provide consent to do so. She simply wants Student removed from the special education program. Parents steadfastly believe that Student is not failing the special education program, but the special education program is failing Student. Both parents have clearly indicated they will not consent to any more assessments or cooperate with any further special education requests or services.

## LEGAL CONCLUSIONS

### APPLICABLE LAW

1. A child with a disability has the right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and California law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 56000.) The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), effective July 1, 2005, amended and reauthorized the IDEA. The California Education Code was amended, effective October 7, 2005, in response to the IDEIA.

2. Districts must reassess special education students at least once every three years, or sooner if conditions warrant, unless the parent and district agree that the reassessment is not necessary. (20 U.S.C. § 1414 (a)(2); Ed. Code, § 56381, subd. (a)(2).) A school district may reassess a student if the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment. (Ed. Code, § 56381, subd. (a)(1).)

3. District cannot exit a student from special education services without first conducting assessments to determine whether such action is appropriate. (20 U.S.C. § 1414(c)(5)(A); Ed. Code, § 56381, subd. (h).)

4. Parental consent for an assessment is generally required before District can assess the student. (20 U.S.C. § 1414(a)(1)(B)(i); Ed. Code, § 56321, subd. (a)(2).)

5. In order to assess or reassess a student, District must provide proper notice

to the student and his/her parents. (20 U.S.C. § 1414(b)(1); Ed Code, §56381, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental and procedural rights under IDEA and state law. (20 U.S.C. § 1414(b)(l); Ed. Code, § 56321, subd. (a).) The assessment plan must appear in a language easily understood by the public and the native language of the student, explain the assessments that the district proposes to conduct, and provide that the district will not implement an IEP without the consent of the parent. (Ed. Code, § 56321, subd. (b)(l)-(4).) District must give the parents and/or the student 15 days to review, sign and return the proposed assessment plan (Ed. Code, § 56321, subd. (a).)

6. District can overcome a lack of parental consent if District prevails at a due process hearing relating to District's need to conduct a reassessment. (20 U.S.C. §1414(a)(1)(B)(ii); Ed. Code, §§ 56321(c), 56506, subd. (e).)

7. Petitioner has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed. 387].)

#### DETERMINATION OF ISSUE

District has established that conditions warrant a reassessment of Student, despite Parents' refusal to consent to the reassessment plan. Parents have requested that Student be exited from special education and the District may not honor that request unless a reassessment is conducted which provides support for an IEP team determination that Student is no longer eligible for special education services. Moreover, Student is performing poorly under the existing IEP, and a reassessment is warranted based on the educational and related service needs, including improved academic achievement and functional performance of Student.

#### ORDER

1. District is entitled to reassess Student in accordance with its February 26, 2007 Assessment Plan.

2. District shall notify Student's parents in writing of the date and time of the

reassessment at least 15 calendar days before the reassessment occurs.

## 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. District has prevailed on the single issue.

## RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this Decision. (Ed. Code, § 56505, subd. (k).)

Dated: May 3, 2007

  
JUDITH L. PASEWARK

Administrative Law Judge

Office of Administrative Hearings

Special Education Division