

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

EL SEGUNDO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2023070586

DECISION

November 20, 2023

On July 18, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from El Segundo Unified School District naming Parents on behalf of Student. On September 22, 2023, OAH granted Student's request for a continuance, setting the hearing to start October 17, 2023. Administrative Law Judge Cararea Lucier heard this matter by videoconference on October 17, 18, and 19, 2023.

Attorney Adam Newman represented El Segundo Unified School District. Dr. Jack Plotkin, Executive Director of Innovation and Student Support Services, attended all hearing days on El Segundo's behalf. Parents represented Student at the hearing and attended all hearing days.

OAH continued the matter to November 20, 2023, for written closing briefs. The record was closed, and the matter submitted on November 20, 2023.

ISSUE

Does El Segundo have the right to assess Student pursuant to the March 27, 2023, assessment plan in the areas of academic achievement, intellectual development, health, and social emotional/behavioral?

JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education, referred to as 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
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) and (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, 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).) El Segundo had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) 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 an eight-year-old boy who qualified for special education and related services under the eligibility category of speech or language impairment. At all relevant times, El Segundo was responsible for offering Student a FAPE.

ISSUE: DOES EL SEGUNDO HAVE THE RIGHT TO ASSESS STUDENT PURSUANT TO THE MARCH 27, 2023, ASSESSMENT PLAN IN THE AREAS OF ACADEMIC ACHIEVEMENT, INTELLECTUAL DEVELOPMENT, HEALTH, AND SOCIAL EMOTIONAL/BEHAVIOR?

El Segundo contends it needs to conduct a comprehensive assessment of Student to better help him at school. Specifically, El Segundo suspects Student may have a learning disability and requires specialized academic instruction. Although Student currently qualifies for an individualized education program, referred to as IEP,

under the category of speech or language impairment, El Segundo suspects he has more needs than articulation. El Segundo is also concerned with Student's health and social emotional functioning. El Segundo contends it has provided Parent with a procedurally correct assessment plan. It believes it has both the legal right and educational obligation to further assess Student pursuant to the March 27, 2023, assessment plan.

Student contends El Segundo has violated the family's trust and privacy. Parents are attentive to Student's needs and have his best interest in mind. Student contends he does not need a health assessment from El Segundo because Parents take him to the doctor when needed. Student asserts Parents can get their own assessments of Student if needed but they do not trust El Segundo. Student contends El Segundo has frequently been rude to Parents and that Parents will not be bullied or harassed into these assessments that Parents have repeatedly refused.

School district evaluations of students with disabilities under the IDEA serve two purposes. They identify students who need specialized instruction and related services because of an IDEA-eligible disability and help IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) In California, evaluations are referred to as assessments. (Ed. Code, § 56302.5.)

A school 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).) 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).)

A school district must conduct a reassessment if it determines that the educational or related services needs of the child, including improved academic achievement and functional performance, warrant a reassessment, or the child'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).)

Assessments require parental consent, or, in the absence of parental consent, an order following a due process hearing. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) To obtain parental consent the school district must provide proper notice to the student and his or her parent. (20 U.S.C. §§ 1414(b)(1); 1415(b)(3), (c)(1); 34 C.F.R. § 300.304(a); Ed. Code, § 56321, subd. (a).) The notice consists of the proposed assessment plan and a copy of parental procedural safeguards under the IDEA and related state laws. (Ed. Code, § 56321, subd. (a).) The assessment plan must

- be in a language easily understood by the public and the native language of the parent;
- explain the types of assessments to be conducted; and
- notify parents that no IEP will result from the assessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).)

The school district must give the parent at least 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

Assessments must be conducted by persons competent to perform them, as determined by the local educational agency. (20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv); Ed. Code, § 56322.) Any psychological assessments of pupils must

be made in accordance with Education Code section 56320 and conducted by a credentialed school psychologist trained and prepared to assess cultural and ethnic factors appropriate to the student being assessed. (Ed. Code, §§ 56322, 56324, subd. (a).) A health assessment must be conducted by a credentialed school nurse or physician. (Ed. Code, § 56324, subd. (b).)

As long as the statutory requirements for assessments are satisfied, parents may not put conditions on assessments. The selection of particular testing or evaluation instruments is left to the discretion of State and local educational authorities. (Letter to Anonymous, U.S. Department of Education, Office of Special Education Programs (OSEP), September 17, 1993.) Parental conditions on assessment “vitiating any rights the school district had under the IDEA for the reevaluation process.” (*G.J. v. Muscogee County Sch. Dist.* (M.D.Ga. 2010) 668 F.3d 1258, 1264.) It is well settled that parents who want their children to receive special education services must allow reassessment by the school district, with assessors of its choice. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) (9th Cir. 1987) 811 F.2d 1307; *Johnson v. Duneland Sch. Corp.* (7th Cir. 1996) 92 F.3d 554, 558; *Andress v. Cleveland Indep. Sch. Dist.* (5th Cir. 1995) 64 F.3d 176, 178-179; *Dubois v. Connecticut State Bd. Of Educ.* (2d Cir. 1984) 727 F.2d 44, 48.)

If parents do not consent to an assessment plan, the school district may conduct the assessment by showing at a due process hearing that it needs to assess the student and it is lawfully entitled to do so. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3).)

STUDENT'S EDUCATIONAL NEEDS WARRANT ASSESSMENT

Student first attended school in-person for first grade during the 2021-2022 school year. He did not attend preschool. Student's kindergarten class was online due to the COVID-19 pandemic and resulting school closures. As such, Ms. MacDonald's first grade class at Richmond Street Elementary School was Student's first experience in an academic, classroom environment.

As a first grader, Student was behind his peers academically and socially. He was a sweet, kind child and a daydreamer. Student required an adult to sit by his side and prompt him through his work. Student would sit quietly at his desk but would not initiate or complete work. In mathematics, Student could count to 20, but could not put anything on paper. Student had a relative strength in reading, although he was not meeting first grade benchmarks. For written language, Student could not independently write anything. Ms. MacDonald used a highlighter to write Student's name and asked him to trace the letters. It was unclear whether Student was not writing independently because he did not know the letters and words, was incapable mechanically, or simply did not want to. For all activities, even fun holiday crafts, Student required an adult next to him to help initiate and complete the task.

Student was a sensitive child who had several emotional outbursts that confused the adults around him. On one occasion, a peer complimented him and Student reacted by immediately crying and screaming at the peer to stop looking at him. Another time, he started crying inconsolably in class because he felt another student was looking at

him. Loud sounds bothered Student and caused him stress. When a peer was tapping mindlessly, Student yelled at the peer and told the teacher the peer was tapping on purpose. At recess and physical education, he often felt the students were out to get him. Ms. MacDonald was surprised by Student's emotional reactions and felt they were not age appropriate.

Ms. MacDonald provided Student general education supports in her classroom. She sat him at a table with two students who had IEPs and a classroom aide so that he could receive extra support socially and academically. Student also received reading intervention support from Lisa Haun, the school reading specialist. However, Ms. MacDonald was concerned about Student's progress in her classroom and referred him for a Student Study Team meeting.

In the spring of his first-grade year, Student's school recommended that he be assessed for eligibility for special education and related services. At Student Study Team meetings on February 18, 2022, and March 18, 2022, Parents, Ms. MacDonald, Ms. Haun, and Vice Principal Carrie Oulashian discussed Student's strengths as well as his continued struggles. Student was kind, and enjoyed singing to himself, spending time with his father, and playing Mario and Minecraft video games. Academically, Student struggled in all areas and was at risk of being retained in first grade. The school's Student Study Team staff were concerned with his many absences and tardies. Additionally, Student had what looked like a panic attack at school, exhibited low stamina, and would put his head on the table. He cried when losing games and was sensitive to sounds in the classroom.

The Student Study Team explained to Parents the general education interventions Student was receiving. In addition to pull-out reading intervention services from Ms. Haun, Student was receiving interventions in his classroom, including

- noise canceling headphones,
- a pencil grip,
- extra time to complete assignments, and
- an adult aide at his table.

Ms. MacDonald also used strategies such as a white board to help him write, highlighted words for him to trace, sentence boxes, and leapfrog reading. Despite the interventions, Student was not progressing as much as the school hoped and expected.

Ms. MacDonald believed Student needed a higher level of support. She suspected he might have a learning disability. She was puzzled by his difficulty remembering things, such as what he ate for breakfast that morning and material he had just read. Ms. Oulashian felt Student was receiving as much support as the school could give him in general education and still not meeting benchmarks. She believed he might need specialized academic instruction through an IEP. The Student Study Team recommended that Student be assessed for special education in:

- academic achievement;
- health;
- intellectual development;
- language/speech communication development;
- motor development; and
- social emotional/behavior.

El Segundo strived to explain the special education assessment process to Parents. At the second Student Study Team meeting, on March 18, 2022, the team pulled school psychologist Sarah Chen into the meeting to describe her part of the testing. Ms. Chen would be assessing Student in the areas of intellectual development and social emotional/behavior. On April 12, 2022, Ms. MacDonald followed up with Parents about the unsigned assessment plan. She reiterated her concern with promoting Student to second grade. On June 8, 2022, Parents consented to part of the assessment plan, agreeing to assessments in the areas of language/speech communication and motor development. Ms. Chen responded to their partial consent with further information about the IDEA and parents' rights.

At an IEP team meeting on September 30, 2022, at the beginning of Student's second grade year, El Segundo found Student eligible for special education and related services under the eligibility category of speech or language impairment. Student had articulation issues, such as saying "wion" for the word "lion." He also struggled with letter formation, handwriting legibility, auditory processing, and motor planning. El Segundo offered Student occupational and speech therapy services, to which Parents consented.

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The IEP team recommended further special education assessment of Student. School members of the team suggested Student might have a learning disability, impacting his academic progress. The IEP team gave Parents an assessment plan proposing to assess Student in:

- academic achievement;
- health;
- intellectual development; and
- social emotional/behavior.

Parents did not agree to assessments in health or social emotional/behavior. El Segundo did not move forward with the academic achievement and intellectual development assessments; it continued to believe Student needed to be assessed in all the proposed areas of the September 30, 2022, assessment plan to receive appropriate supports.

Student attended second grade in Tahnya Nodar's class at Richmond Street Elementary. He was a quiet, shy, well-behaved boy who never disrupted the classroom. Student made progress in reading during second grade with the support of reading intervention services from Ms. Haun. By the end of second grade, Student met grade level expectations for reading. In contrast, Student had significant difficulty with writing and mathematics and could not keep up with the class. Student struggled to get started on assignments and lacked the mental stamina to complete his work. He would sit quietly and stare at the work rather than accomplish the tasks presented. He required individualized support. Ms. Nodar was also concerned that Student sometimes cried inconsolably in her class.

On December 7, 2022, Ms. Oulashian emailed Parents asking them to consent to the assessment plan proposed at the September 30, 2022, IEP team meeting. She thought Parents may have misunderstood what a special education assessment entailed and attempted to provide clarification. She reminded Parents that the school suspected Student might have a learning disability and could benefit from specialized academic instruction. Parents did not consent and were frustrated by what they perceived as the school's pressure to sign the assessment plan. Parents responded they felt they were being threatened by El Segundo, that school staff ambushed Student's mother at school pick up time and aired the family's private details, and that the school called the police on the family. Parents did not want Student under any "psychiatric study." Parents believed Student was making progress and that El Segundo was not recognizing his progress.

El Segundo school staff continued to suspect that Student had further areas of disability that were impacting his school performance. On March 27, 2023, El Segundo sent Parents a prior written notice letter with an assessment plan, and procedural safeguards. On April 27, 2023, Parents responded reiterating that their decision had not changed. They did not consent.

ACADEMIC ACHIEVEMENT AND INTELLECTUAL DEVELOPMENT ASSESSMENTS

El Segundo suspects Student may have a learning disability, and as such is requesting to assess Student in the areas of academic achievement and intellectual development. Ms. Nodar was concerned with Student's lack of academic progress during second grade. Carolyn Elder, Student's third grade teacher, was concerned with his writing production, number sense in mathematics, and task initiation. Generally, he

did not initiate tasks assigned to him. This became even more challenging for multi-step problems in third grade because he needed to be prompted through each step to get a process done. He required adult assistance and prompting in all academic areas within his third-grade class, including reading, writing, science, and mathematics. He also needed help using appropriate academic language, such as saying "addition" and "subtraction" instead of "plussing" and "minussing." He was not keeping up with the pace and rigor of third grade.

Julie Dunlap provided occupational therapy services to Student. She believed Student required further assessment because she saw him having difficulty with processing and task initiation. She also observed Student had difficulty sustaining attention in his classroom. He was not generalizing the skills he demonstrated in her occupational therapy sessions into the general education classroom.

Meghan Titus provided speech therapy services to Student. She believed he required assessment in phonological processing because she suspected he had deficits in this area that impacted his reading and writing.

Ms. Haun believed assessment of Student was warranted because she suspected he might have dysgraphia which impacted his writing. She also observed him having attention issues.

Ms. Chen believed a standardized cognitive assessment would give the team data about Student's learning profile, including his strengths and weaknesses, which would help the school support Student.

Ms. Oulashian believed academic assessment of Student was warranted because he was not meeting benchmarks in writing and mathematics. He struggled to get ideas

on paper. He also had challenges with initiation, work production, and task completion. She was concerned that although he was doing better with reading fluency he struggled with comprehension. She believed assessment was the only way they could meet Student's needs because he was not progressing.

El Segundo proved Student had educational needs, including improved academic achievement and functional performance, that warrant assessments in academic achievement and intellectual development. Additionally, Student's teachers, Ms. Nodar and Ms. Elder, requested assessments for Student in these areas. El Segundo is entitled to assess Student in academic achievement and intellectual development as proposed in the March 27, 2023, assessment plan.

HEALTH ASSESSMENT

El Segundo is requesting to assess Student's health because Student had many absences for health-related reasons and showed limited stamina in his classroom. Due to his absences, Student missed academic instruction. Dr. Plotkin tried to explain to Parents that data and research show a direct correlation between poor attendance and poor academic achievement. The team also wanted to assess Student's vision and hearing to make sure they were not the cause of his challenges in the classroom. Ms. Elder was concerned about Student's ability to listen and follow directions in her classroom. El Segundo proved Student had educational needs, including improved academic achievement and functional performance, that warrant a health assessment. Additionally, Student's teacher, Ms. Elder, requested a health assessment. El Segundo is entitled to assess Student in health as proposed in the March 27, 2023, assessment plan.

SOCIAL EMOTIONAL/BEHAVIOR ASSESSMENT

School staff are concerned about Student's social emotional functioning and suspect that he may require special education support in this area. Ms. Nodar suspected that social emotional issues were impacting his education. Student's inability to cope with small disappointments caused him to shut down, and at times become inconsolable. For example, on one occasion in second grade the students watched a music performance while sitting on towels on the ground. Student did not bring a towel. Rather than accepting the suggestion of the adults around him to share a towel with a peer, Student became inconsolably upset and cried. In Ms. Nodar's view, this type of reaction was something she might see from a kindergartener, but not from a second grader. Student was slow to recover and emotionally regulate himself after these types of incidents, which interfered with his participation in his school activities. Ms. Elder was concerned that Student was very quiet and did not ask for help when stuck.

Dr. Plotkin believed El Segundo needed to conduct a comprehensive assessment of Student to identify his needs, including a social emotional/behavior assessment. Dr. Plotkin also suspected Student might qualify for special education for an emotional disturbance. El Segundo proved that Student's educational needs, including improved academic achievement and functional performance, warrants a social emotional/behavior assessment. Additionally, Student's teachers, Ms. Nodar and Ms. Elder, requested assessment in this area. El Segundo is entitled to assess Student in social emotional/behavior as proposed in the March 27, 2023, assessment plan.

PROCEDURAL REQUIREMENTS

NOTICE, CONSENT, AND PARENTAL SAFEGAURDS

El Segundo's March 27, 2023, assessment plan met all legal requirements. The assessment plan was written in English, Parents' native language. It was in language easily understood by the public. The assessment plan explained the types of assessments to be conducted and that no IEP would result from the assessment without the consent of the parent. In the prior written notice letter to Parents, Dr. Plotkin explained Parents had 15 days to sign and return the assessment plan and provided Parents with a copy of their procedural safeguards. El Segundo provided Parents with a proper assessment plan under the law.

COMPETENT ASSESSORS

El Segundo assigned school psychologist Sarah Chen to conduct the intellectual development and social emotional/behavior assessments proposed in the March 27, 2023, assessment plan. Ms. Chen holds a bachelor's degree in psychology and two master's degrees in special education and school psychology. She is a board-certified behavior analyst, and has a pupil personnel services credential, which allows her to assess students. She has 11 years of experience in education, as a teacher, behavior analyst, and school psychologist. She has conducted hundreds of assessments. Ms. Chen is trained and prepared to assess cultural and ethnic factors appropriate to Student. She knows Student and has good rapport with him. She is aware of Parents'

concerns about the assessment process and does not intend to ask intrusive questions, violate the family's privacy, or exceed the scope of her role as a school psychologist assessing Student to determine how to help him at school. Ms. Chen is a credentialed and exceptionally well-qualified school psychologist, and is competent to conduct the intellectual development and social emotional/behavior assessments proposed by El Segundo in the March 27, 2023, assessment plan.

El Segundo assigned Beth Katz to conduct the academic assessment of Student. Ms. Katz is a credentialed special education teacher with 18 years of teaching experience. She holds a bachelor's degree in elementary and special education and a master's degree in early childhood education. She is trained in conducting academic assessments and has done hundreds of assessments in her career. Ms. Katz is competent to conduct the academic assessment proposed by El Segundo in the March 27, 2023, assessment plan.

Liv Nystrom was tasked with conducting the health assessment of Student. Ms. Nystrom has two bachelor's degrees in psychology and nursing. She has worked as a nurse for over eight years and served as a nurse in El Segundo since August 2022. She has conducted over 100 health assessments in her career. She is trained and experienced in conducting vision and hearing screenings of students. Ms. Nystrom, a registered and credentialed nurse, is competent to conduct the health assessment proposed by El Segundo in the March 27, 2023, assessment plan.

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CONCLUSIONS AND 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.

El Segundo has the right to assess Student pursuant to the March 27, 2023, assessment plan, in the areas of

- academic achievement,
- intellectual development,
- health, and
- social emotional/behavior.

El Segundo prevailed on the only legal issue in this matter.

ORDER

1. El Segundo is entitled to assess Student pursuant to the March 27, 2023, assessment plan, without Parents' consent.
2. Parents shall reasonably cooperate in the assessment process by making Student available for assessment and by providing Parents' perspective and insight as to Student's functioning and needs, as appropriate and when requested. Parents shall not place any conditions on the assessments.
3. All other requests for relief are denied.

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.

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearing