

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2023010228

ROSEDALE UNION ELEMENTARY SCHOOL DISTRICT,
V.
PARENTS ON BEHALF OF STUDENT.

DECISION

March 21, 2023

On January 10, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Rosedale Union Elementary School District, naming Parents, on behalf of Student. Rosedale Union Elementary School District is called Rosedale. Administrative Law Judge Judith L. Pasewark heard this matter by videoconference on January 31, 2023.

Anisha Asher and Zachary Davina, Attorneys at Law, represented Rosedale. Tina Altergott, Director of Special Education, attended on behalf of Rosedale. Parents did not appear for the hearing. Parents did not take part in the prehearing conference held on January 23, 2023, despite receiving notification of the prehearing conference and due process hearing dates. OAH served each parent individually with the Order Following

Prehearing Conference, by e-file transmission on January 24, 2023, and by personal delivery to each parent's residence on January 26, 2023. The ALJ confirmed Parents' individual email addresses and residence addresses from email correspondences from each parent provided to Rosedale and OAH. Student did not attend the hearing.

The ALJ continued the matter to February 28, 2023, for submission of Rosedale's written closing brief. OAH closed the record and submitted the matter on February 28, 2023.

ISSUE

May Rosedale assess Student pursuant to its November 5, 2021 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, called a 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).) Rosedale requested this hearing; therefore, Rosedale bears the burden of proof. 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).)

In this matter, each parent individually participated or refused to take part in the IEP process, and therefore, are individually referred to as Mother and Father. Jointly, they are referred to as Parents. Student lived with Mother within the boundaries of Rosedale, the responsible local educational agency in this matter. Student was in the eighth grade for the 2022-2023 school year and will transition to high school in the ninth grade.

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ISSUE: MAY ROSEDALE ASSESS STUDENT PURSUANT TO ITS NOVEMBER 5, 2021 ASSESSMENT PLAN WITHOUT PARENTAL CONSENT?

Rosedale contended Student's reassessment was required to comply with Parents' request for assessment, and to develop an appropriate offer of FAPE. Rosedale contended it prepared a legally compliant assessment plan and tried to obtain Parents' cooperation and consent to no avail.

A school district must give the parents at least 15 days to review, sign, and return a proposed assessment plan. (Ed. Code, § 56321, subd. (a).) If parents do not consent to the reassessment plan, the district may request judicial override by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (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).) Without an order after a due process hearing, reassessments require parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)

When a special education student transfers to a new school district in the same academic year, the new district must adopt an interim program that approximates the student's old, individualized education program, called an IEP, as closely as possible for 30 days until the old IEP is adopted or a new IEP is developed. (20 U.S.C. § 1414(d)(2)(C)(i)(1); 34 C.F.R. § 300.323(e); Ed. Code, § 56325, subd. (a)(1); see *Ms. S. ex rel. G. v. Vashon Island School Dist.* (9th Cir. 2003) 337 F.3d 1115, 1134, 20 U.S.C. § 1414(d)(1)(B).) The IDEA and state law, however, do not expressly provide that students who transfer school districts between academic years, as in this matter, are entitled to a comparable placement. (See *Ibid.*)

In 2006, the United States Department of Education considered the responsibilities of a transferee school district to a child with special needs, in response to the 2006 revised version of the IDEA's regulations. In doing so, the Department of Education declined to change title 34 Code of Federal Regulations section 300.323(e) by adding specific provisions relating to transfers between school years. In its comments to the 2006 regulations, the Department of Education noted that, in the case of transfers between school years, the IDEA provided that the new school district was required to have an IEP in place for each eligible child at the beginning of the school year. The comments, however, did not specify that the new school district must adopt the child's prior IEP or model the new IEP based on the child's IEP from the prior school district. Rosedale opted for the 30 -day implementation model.

Student enrolled in Rosedale on August 15, 2021. On his enrollment form, Mother indicated Student received special education and related services pursuant to an IEP.

Student's educational records provided by his prior school districts, indicated Student initially qualified for special education and related services under the eligibility category of autism, and he received specialized academic support in the form of a special day class, with weekly speech and language services. Student's three-year review assessments conducted by Panama-Buena Vista Union School District in September 2018, determined Student no longer qualified under the category of autism. Panama-Buena Vista eliminated Student's specialized academic instruction but continued his eligibility under speech and language impairment due to a fluency disorder.

Student enrolled in Fruitvale School District for the 2019-2020 school year. Student's IEP from Panama-Buena Vista provided Student with 900 minutes per year of speech and language services. Once enrolled at Fruitvale, Mother requested a new multidisciplinary assessment to determine if Student would benefit from more special education supports and services.

Fruitvale conducted reassessments and generated a multidisciplinary psychoeducational assessment report dated November 18, 2019. Fruitvale's 2019 multidisciplinary reassessments were the last assessments conducted for Student.

On November 18, 2019, Fruitvale held an IEP team meeting to review the multidisciplinary reassessments and proposed adding specialized academic instruction and occupational therapy consultation to Student's IEP, in addition to his speech and language services. Mother did not consent to this IEP and signed the IEP document indicating her attendance only. The IEP document, however, showed Mother's consent to implementation of the IEP, as evidenced by her initialed approval. Mother disagreed and considered the Fruitvale IEP a fraud.

As demonstrated by the considerable email communications between Mother and Rosedale staff, Mother's allegations of IEP alterations and fraudulent signatures were related to Student's earlier IEP documents generated in prior school districts. At no time, was Rosedale involved in generating the documents Mother questioned. Although Rosedale could modify or revise an existing IEP through the IEP process for a student within its jurisdiction, it could not unilaterally remove the contents or signatures of a prior IEP created by another school district.

Upon Student's enrollment in August 2021, Rosedale sought to convene an IEP team meeting to discuss any changes to Student's 2019 IEP. Rosedale also needed to

determine whether it needed to conduct assessments to develop an appropriate IEP for Student. Student's transfer occurred between school years. Rosedale was obligated to have an IEP in effect at the beginning of the school year. Rosedale adopted a 30-day implementation of Student's last implemented IEP for the beginning of the 2019-2020 school year. Student's records reflected he entered Rosedale with a November 18, 2019 assessment report from Fruitdale reflecting his most recent multidisciplinary assessment. For purposes of implementation only, Fruitvale's November 18, 2019 IEP constituted Student's last implemented IEP.

NEED TO ASSESS

A 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.

The IDEA provides for reevaluations to be conducted no more frequently than once a year, but at least once every three years, unless the parents and the agency agree that it is unnecessary. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2) (2006); Ed. Code, §§ 56043, subd. (k), 56381, subd. (a)(2).)

The district must also conduct a reassessment if it determines that the educational or related service needs of the child, including improved academic achievement and functional performance, warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1) (2006); Ed. Code, § 56381, subd. (a)(1),(2).)

Rosedale proved Student's reassessment was necessary to comply with Parents' request to change Student's special education eligibility category and to develop an appropriate offer of FAPE for Student.

Upon Student's enrollment in August 2021, Rosedale sought to convene an IEP team meeting to develop an appropriate IEP for Student. Mother initially agreed to attend an IEP team meeting scheduled for September 14, 2021. Mother requested

additional information which Rosedale provided. After reviewing the standard IEP invitation form, Mother misunderstood the language contained in the invitation. Mother believed that signing the invitation, provided parental consent to Fruitvale's 2019 IEP, which Mother unequivocally refused consent. Mother refused to sign anything that suggested any agreement to Student's past IEPs. Mother questioned whether a meeting should take place at all, because she would not sign or approve any of Student's prior IEPs. On September 13, 2021, Mother cancelled the IEP team meeting.

Difficulties ensued in coordinating the attendance of Parents, all necessary IEP team members, and parentally requested parties. As Rosedale opted for a 30-day implementation of Student's last IEP, Tammie Walker, Student's special education teacher and case manager, requested parental consent to open and continue a 30-day IEP team meeting.

Mother refused Walker's request. Nevertheless, on September 16, 2021, Rosedale convened Student's IEP team meeting for the purpose of maintaining the 30-day timeline. Parents did not attend. The IEP team did not discuss or review Student's IEP at this meeting.

In an email to Mother on September 16, 2021, Tyler Clutts, a confidant of Mother, emphasized that the most important thing with regards to the IEP team meeting was having the diagnosis of autism added to the IEP, as it was the disputed issue with the prior school districts. Clutts wanted to make sure Student had access to all resources and services regarding the diagnosis of autism as it was an important part of his education. Mother followed up with an email to Walker explaining that she did not agree to the 2019 IEP, as Student's needs had changed due to autism and environmental changes. These

emails, sent to Walker and special education coordinator Christine Ozaeta, placed Rosedale on notice of Mother's focus on an autism eligibility, as well as explained to some extent, Mother's opposition to the 2019 IEP.

Walker notified Mother that if she were not in agreement with Fruitvale's determination of special education eligibility, Mother could request a new assessment to determine eligibility, during the discussion at the IEP team meeting. Walker followed up with another email indicating Rosedale would strive to resolve Parents' questions and discuss eligibility at the IEP team meeting.

On September 24, 2021, Walker sent a revised IEP invitation to Parents for Student's annual review. Mother thought Rosedale's invitation was dishonest. Mother thought the purpose of the IEP team meeting was an attempt to legitimize the Fruitvale IEP. Mother did not electronically sign the invitation.

On September 30, 2021, after IEP dates were cleared, Mother requested the school nurse be present for the IEP team meeting. The nurse, however, was not available on the dates available to Parents. Walker requested Mother send any medical documentation of health issues to the nurse for review.

Mother responded that requesting Student's medical records would cause another postponement of the IEP team meeting. Parents would not attend an IEP team meeting without the nurse present. Mother indicated she needed to speak with Student's attorney to decide what to do. Mother's further language was hostile and blamed Rosedale for delays in addressing Student's needs.

On October 14, 2021, Mother notified Rosedale that she would no longer accept email communications from the school district. Mother instructed Rosedale

that emailed documents, notices and other communications, would not be opened or acknowledged due to past documents being altered, destroyed, or not provided upon request. Mother notified Rosedale that all documents, requests, questions, communications, electronic data, or other necessary information, must be sent to Mother's mailing address on file or be sent home with Student. Father also notified Rosedale he would no longer communicate through emails, nor would he provide electronic signatures.

Rosedale convened Student's annual IEP team meeting on October 27, 2021. The IEP team meeting was held remotely on videoconference. All required IEP team members were present, except Mother. All IEP team members received a digital copy of Student's last agreed upon IEP, Student's present levels of performance, and drafts of the proposed goals, objectives, accommodations, and Student's progress reports for the IEP. Rosedale provided Parents with copies of procedural safeguards.

Father and Student's stepfather attended the IEP team meeting. Father expressed concern that Rosedale did not invite Mother to the IEP team meeting. The IEP team informed Father that Tina Altergott, the Director of Special Education, mailed the invite to Mother and placed a copy in Student's backpack as requested. Father rationalized Mother misunderstood. Although the invitation clearly showed Mother's name and address in the letter, Rosedale did not specifically mention Mother's name in the body of the letter, despite the request for her signature and return of the signed invitation.

Father informed the IEP team that Parents wanted Student's special education eligibility changed to autism. Altergott answered Father and Stepfather's questions about the assessment process. The IEP team informed Father and Stepfather that

Rosedale needed to conduct a special education assessment to determine if Student met the eligibility criteria for autism. The assessment would take 60 days to complete. Altergott explained that Melissa Gomez, the school psychologist, would contact Mother to obtain her written consent to the assessment plan. Rosedale intended to assess Student in the areas of

- academics,
- health,
- occupational therapy,
- speech and language, and
- social emotional.

Rosedale offered this multidisciplinary assessment as Student's triennial assessment.

Altergott explained the assessments would begin as soon as Mother reviewed and gave written consent to the assessment plan. Gomez would reach out to Mother to schedule a time for Mother to come to Rosedale's offices in person, to discuss the assessment plan and provide written consent.

Clutts attended the IEP team meeting and asked how many hours the school psychologist intended to spend with Student during the assessment. Gomez reported she would conduct multiple observations in different settings during school. Gomez intended to observe Student during language arts, math, some of his general education classes, and during lunch. Gomez would also be present during part of the direct assessment used to complete the Childhood Autism Rating Scale.

Father and Stepfather signed the IEP as to attendance and participation only. The IEP notes showed Rosedale would mail a full copy of the IEP document to each parent.

Rosedale established a need to reassess Student. Student transferred to Rosedale at the beginning of the 2021-2022 school year. Parents did not agree with the findings of the 2018 Panama-Buena Vista three-year review assessments, or the 2019 Fruitvale assessments, which terminated eligibility for special education and related services under the category of autism. Parents disavowed the 2019 Fruitvale IEP and insisted Rosedale change Student's eligibility to autism. While Rosedale agreed to consider Parents' request, it could not do so without first reassessing Student to determine eligibility. Rosedale also required reassessment data to develop an educational program that would appropriately address Student's needs. All of this was explained to Father and Stepfather at the October 27, 2021 IEP team meeting and was referenced in the IEP document notes that Rosedale sent to Parents after the IEP team meeting. Rosedale provided Parents sufficient information to understand the need to reassess Student, especially in light of their own request to do so.

REQUIREMENTS OF ASSESSMENT PLAN

A reassessment of the pupil in accordance with section 1414(a), (b), and (c) of title 20 United States Code, shall be conducted if the local educational agency determines that the educational or related services, including improved academic achievement and functional performance of the pupil warrant reassessment, or if the pupil's parent or teachers request a reassessment. (Ed. Code, § 56381 (subd.(a)(1).)

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).)

School districts must give notice of the proposed assessment plan and a copy of the parents' procedural safeguards and parental rights under the IDEA and related state laws. (20 U.S.C. § 1415(c), (d); Ed. Code, § 56321, subd. (a).) The assessment plan must be accompanied by notice that advises parents that an IEP team meeting will be scheduled to discuss the assessment results and recommendations. (Ed Code, § 56329, subd. (a)(1).)

The assessment plan must be in a language easily understood by the public and in the native language of the parents; explain the types of assessments to be conducted; and state that no IEP will result from the assessment without the consent of the parents. (20 U.S.C. § 1415(b))(3) & (4); Ed. Code, 56321, subd. (b)(1)-(4).) The assessment plan must explain the evaluation procedures and the areas of proposed reassessment (20 U.S.C. §§ 1414(b)(1), 1415(c).)

If an assessment for the development or revision of the IEP is to be conducted, the parent or guardian of the pupil shall be given, in writing, a proposed assessment plan within 15 days of the referral for assessment. (Ed. Code, § 56321, subd. (a).)

Rosedale proved that the assessment plan followed all legal requirements and provided Parent with sufficient information to allow informed consent.

On November 5, 2021, Gomez created an assessment plan for Student based upon Father's request for an assessment to consider an autism eligibility for special education and related services at the October 27, 2021 IEP team meeting. Rosedale created the assessment plan in Parents' native language of English, in a format understandable by the public.

The assessment plan included a description of the proposed assessment and an explanation for why Rosedale proposed to assess Student. Rosedale required the assessments to determine Student's eligibility, present levels of academic achievement, functional needs, and individual education needs.

The assessment plan stated that parental permission was needed before assessing Student to determine continued eligibility for special education services. The assessment plan informed Parents of their right to be familiar with the assessment procedures and types of assessment that might be used to assess Student. After completion of the assessment, Rosedale would notify Parents in writing of an IEP team meeting to discuss the results of the assessment. If found eligible for special education and related services, the IEP team would discuss a full range of program options.

Rosedale intended to assess Student in all areas of suspected need. The assessment plan notified Parents that assessments conducted might include, but were not limited to, observations, rating scales, one-on one testing, or some other types or combination of assessments. Based upon Father's eligibility request and IEP team discussions, Rosedale offered the following assessments:

1. An academic achievement assessment conducted by a special education teacher to measure Student's reading, spelling, arithmetic, oral and written language skills, and general information.
2. A health assessment conducted by a school nurse to gather health information to determine how Student's health affected his school performance.

3. A language/speech communication development assessment conducted by a speech and language pathologist to measure Student's ability to understand and use language and communicate clearly and appropriately.
4. A motor development assessment conducted by an occupational therapist to measure how well Student coordinated body movement in small and large muscle activity, along with measurement of Student's perceptual skills.
5. A social emotional assessment conducted by a school psychologist to determine how Student feels about himself, gets along with others, and his ability to regulate his emotions and behaviors.

The assessment plan had a space for Parents to request additional evaluations or reports to review as part of the assessment process. Finally, the assessment plan requested consent from Parents to conduct the assessments.

The assessment plan included a copy of procedural safeguards which included sources for Parents to contact and obtain help in understating these rights. If Parents had questions about the assessment plan or assessment process, or if either or both wanted to meet with at least one Rosedale staff member to discuss the assessment plan or supply more input into the assessment plan, Parents were invited to contact Gomez.

The informed involvement of parents is central to the IEP process. (*Winkleman 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* (OSEP 2010).) 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.)

The evidence established Rosedale gave Parents sufficient information to allow informed consent. The purpose of these assessments was to decide whether Student continued to qualify for special education and related services, and what support and services Student needed to obtain educational benefit. The broad language of the assessment plan sufficiently informed Parents of the areas to be assessed and the credentials needed to administer the assessments. Parents were entitled to no more, nor did Parents have veto power over Rosedale's right to reassess Student.

JUDICIAL OVERRIDE OF PARENTAL CONSENT TO REASSESS

Rosedale tried to obtain Parents' cooperation and consent to reassess Student to no avail.

On November 5, 2021, Gomez mailed the assessment plan to each parent in compliance within the statutory 15-day requirement. On November 10, 2021, Altergott, sent each parent a letter enclosing a copy of procedural safeguards, the proposed assessment plan, and the health history and parent interview forms to be completed by each parent for the assessments.

On May 2, 2022, Altergott again sent Parent a copy of the November 10, 2021 letter, enclosing a copy of the October 27, 2021 IEP, the procedural safeguards, assessment plan, and health history and parent interview forms. Altergott again requested parental consent to both the IEP and assessment plan.

On May 2, 2022, Altergott sent a letter to Father with a copy of the October 27, 2021 IEP and notified Father that either parent could contact Altergott with additional questions or to request another IEP team meeting.

Parent's last communication with Rosedale consisted of Father's November 4, 2021 email, in which he revoked his electronic signature, and confirmed his attendance at the October 27, 2021 IEP team meeting. Neither parent responded nor consented to Rosedale's request to assess Student. Further, neither parent communicated with Rosedale for the rest of the 2021-2022 school year.

On September 12, 2022, Kevin Turner, Principal at Rosedale, received an email from Mother, which he sent to Altergott. Mother asked that Rosedale provide all notices promptly, and that Rosedale schedule IEP team meetings with consideration for parental availability. Parents reiterated they would not attend an IEP team meeting until Rosedale corrected the violations on forged documents, referring to the 2021 Fruitvale IEP. The Rosedale generated October 27, 2021 IEP document was not forged, as neither parent provided a signature or consent. Father concurred he would not attend any IEP team meetings until Rosedale corrected the documents as requested by Mother. Further, Mother wanted Rosedale to apologize for treating her poorly.

The ensuing emails from Parents to Turner continued in a sarcastic and hostile tone. In response, on September 29, 2022, Turner, with the assistance of Altergott, provided Parents with a detailed history of Rosedale's attempts to collaborate with Parents and answer their questions about special education procedures. The email explained Rosedale was required to hold annual IEP team meetings for all students with disabilities. Rosedale staff spoke with Parent to schedule an IEP team meeting and obtain consent for the triennial assessment. Mother indicated she would not consent to

reassessment or attend an IEP team meeting due to altered documents. Turner's letter reported Rosedale staff tried to contact Mother on August 17, and again on August 25, 2022, by leaving a telephone message. Parent responded on August 25 2022, by informing staff that Parents would not attend the annual IEP team meeting until the alleged altered document was back in its original state.

On September 22, 2022, Altergott sent Parents a letter of prior written notice pursuant to title 20 United States Code, section 1415(b)(3), and title 34 Code of Federal Regulations section 300.503.

In a prior written notice letter, Rosedale informed Parents that Student's three-year review assessments needed to be completed by November 18, 2022. Rosedale enclosed the proposed assessment plan with the letter. Only the date of the assessment plan was updated from the previous November 5, 2021 assessment plan sent to Parents.

The prior written notice informed Parents that under California law, school districts must conduct assessments of special education students at least once every three years. Fruitvale conducted Student's last three-year review assessment in 2019.

The prior written notice included the caveat that if a parent does not consent to the reassessments and Rosedale believes the assessments are necessary for the student to receive a FAPE, Rosedale may file a request for due process hearing with OAH to override the lack of consent and assess the student. Rosedale believed that conducting triennial assessments for Student were necessary for him to receive a FAPE in the least restrictive environment. Rosedale did not want the matter to proceed to litigation unnecessarily and hoped Parents would consent to the enclosed assessment plan.

Altergott enclosed another copy of procedural safeguards and supplied the addresses of the Kern County Consortium Special Education Local Plan Agency and the California Department of Education, for Parents to contact for further explanation of their rights and procedural safeguards.

Parents did not respond or consent to the assessment plan, thereby requiring Rosedale to seek this override of parental consent to reassess Student.

The evidence established that Rosedale made reasonable efforts to obtain Parents' consent to the reassessment by sending the assessment plan to each parent by U.S. mail, as requested by Parents. Parents did not consent to the reassessments after 15 days.

Rosedale established the November 5, 2020 assessment plan, procedurally met the requirements of the IDEA. Rosedale showed the reassessment was necessary to complete Student's three-year review assessment to allow Student's IEP team to develop an appropriate educational program for Student, as well as to address Parents' request to change Student's eligibility to autism. Further, Parents' continual delays and refusal to cooperate in the IEP process left Student with outdated data about his strengths and weaknesses from 2019, again necessitating reassessment to determine his current educational functioning. The evidence presented through Mother's emails to Rosedale showed a chronological history of intentional delay and bad faith allegations that Rosedale altered special education documents created by other school districts.

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.)

Rosedale is entitled to reassess Student without parental consent.

LEGAL CONCLUSIONS

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.

Rosedale may assess Student pursuant to its November 5, 2021 assessment plan without parental consent.

Rosedale prevailed on the sole issue presented in this matter.

ORDER

1. Rosedale may conduct a multidisciplinary assessment of Student pursuant to the November 5, 2021 assessment plan.
2. Rosedale must notify each parent within 15 business days of this Decision of the dates, times, and places Rosedale requires Parents to present Student for assessment. Rosedale has the authority to reject or approve any changes to the designated assessment dates proposed by Parents.
3. Parents are ordered to cooperate in making Student available for assessments as requested by Rosedale to comply with state and federal timeline requirements.
4. Parent must promptly complete and return any documents requested by Rosedale as a part of the assessment process, including but not limited to releases of information necessary for a health assessment, parental

interviews, and ratings scales. Parents must complete all forms honestly and in good faith so that Rosedale may obtain valid assessment results.

5. Both parties are ordered to communicate with each other in a cooperative and professional manner throughout the assessment process.
6. Rosedale may communicate with Parents through email correspondence about scheduling and conducting the assessments and scheduling the date for the IEP team meeting to discuss the assessment results.

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