

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

SOLEDAD UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

CASE NO. 2025040218

DECISION

JUNE 5, 2025

On April 4, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Soledad Unified School District, naming Student. Administrative Law Judge Jeanie Min heard this matter via videoconference on April 29, 30, and May 1, 2025.

Attorney Erin Frazor represented Soledad. Special Education Director Sandra Cante attended all hearing days on Soledad's behalf. Parents represented Student and attended all hearing days on Student's behalf. Student did not attend the hearing.

At the parties' request, the matter was continued to May 22, 2025, for written closing briefs. The record was closed, and the matter was submitted on May 22, 2025.

ISSUE

May Soledad assess Student pursuant to the August 30, 2024 assessment plan without Parents' consent?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, 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 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education, called 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), (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. The party requesting the hearing 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).) Here, Soledad had 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).)

Student was 10 years old and in fourth grade at the time of hearing. Student was eligible for special education under the categories of other health impairment and speech and language impairment. Student resided within Soledad's geographic boundaries at all relevant times.

ISSUE: MAY SOLEDAD ASSESS STUDENT PURSUANT TO THE AUGUST 30, 2024 ASSESSMENT PLAN WITHOUT PARENTS' CONSENT?

Soledad seeks authorization to assess Student pursuant to the August 30, 2024 assessment plan without parental consent. Soledad contends it complied with all statutory requirements in developing the proposed assessment plan and documented its efforts to obtain parental consent. Soledad contends it must assess to determine Student's current educational and behavioral needs to make an appropriate offer of FAPE.

Parents contend Soledad's proposed assessors were not qualified to assess Student. Parents argue, therefore, Soledad's assessors should not assess Student without parental consent.

SOLEDAD'S DETERMINATION TO OFFER THE AUGUST 30, 2024 ASSESSMENT PLAN

A district must conduct a reassessment at least once every three years, unless the parents and district agree otherwise. (20 U.S.C. § 1414(a)(2)(B)(ii); 34 C.F.R. § 300.303(b)(2); 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 student warrant a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a).) The IDEA uses the term "evaluation," while the California Education Code uses the term "assessment." (Ed. Code, § 56302.5.) This Decision will use the term "assessment."

Student's last implemented individualized education program, called an IEP, was dated April 27, 2022, and amended on July 28, 2022. Soledad completed Student's last psychoeducational reassessment on March 22, 2023, as a part of its three-year review. Although Soledad conducted the reassessment during the 2022-2023 school year, the three-year review IEP team meetings stretched into the 2023-2024 school year, then into the beginning of the 2024-2025 school year. Between March 22, 2023 and August 29, 2024, Soledad held multiple IEP team meetings to discuss the March 22, 2023 three-year review assessment report and Soledad's offer of FAPE pursuant to this March 2023 reassessment.

During the 2023-2024 school year, Student only attended 23 days of school. At the August 29, 2024 IEP team meeting, held to further discuss Student's three-year review, Soledad proposed to reassess Student because Student missed nearly an entire year of school and Soledad's offer of FAPE was based on a reassessment completed in March 2023, among other reasons. On August 30, 2024, Soledad offered Parents an

assessment plan to conduct an early comprehensive reassessment to gather further data to determine Student's continuing eligibility and current educational needs. Parents did not consent to the August 30, 2024 assessment plan.

Soledad submitted evidence demonstrating changes in Student's special education and related service needs since Student's March 2023 reassessment. However, it is unnecessary for this Decision to address Student's need for reassessment because Soledad's August 30, 2024 assessment plan was procedurally deficient, as discussed below. Soledad did not satisfy all criteria for it to be authorized to conduct assessments pursuant to the August 30, 2024 assessment plan without parental consent.

THE PROPOSED ASSESSOR FOR HEALTH WAS NOT QUALIFIED

Soledad's August 30, 2024 assessment plan failed to identify a qualified assessor to conduct Student's health assessment.

The assessment plan must explain the types of assessments to be conducted. (20 U.S.C. § 1415(b)(3), (4); Ed. Code, § 56321, subd. (b)(1)-(4); see also 34 C.F.R. § 300.9(a).) Assessments must be conducted by individuals 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.) A health assessment must be conducted by a credentialed school nurse or physician. (Ed. Code, § 56324, subd. (b).) A vision and hearing test must be administered by qualified health supervisors, certificated employees, or other qualified individuals under contract with the school district. (Ed. Code, § 49452.)

The August 30, 2024 assessment plan explained the types of assessments to be conducted. The plan proposed to assess Student in the following areas by the following people:

- health/developmental history by a school psychologist;
- cognition by a school psychologist;
- perceptual/motor ability by an occupational therapist;
- speech and communication development by a speech and language specialist;
- pre-academic/academic performance by a special education teacher;
- social/emotional/behavioral development by a school psychologist;
- self-help/adaptive skills by a school psychologist and a special education teacher; and
- functional behavior analysis by a behavior specialist.

The assessment plan explained to Parents that the health and developmental history assessment would consist of a records review of developmental history, health history, physician's report, and vision and hearing screenings. The plan proposed to assess Student in health and developmental history by a school psychologist. Lawrence Fernando was a Soledad school psychologist who would have been responsible for conducting Student's health and developmental history assessment pursuant to the August 30, 2024 assessment plan. While Fernando testified that he had developed over 100 health and developmental history reports as part of IEPs, and that he was trained and knowledgeable to administer this assessment, his

testimony was unpersuasive. Soledad failed to establish that Fernando was either a credentialed school nurse or a physician qualified to conduct a health assessment. Soledad also failed to establish that Fernando held the appropriate credentials to administer a vision or hearing screening. Therefore, Fernando was not qualified to conduct Student's health assessment or conduct vision and hearing screenings.

SOLEDAD FAILED TO GIVE PARENTS REQUIRED NOTICE WITH THE ASSESSMENT PLAN

Soledad failed to provide Parents the required written notice with the August 30, 2024 assessment plan.

Assessment of a student requires informed parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c); Ed. Code, § 56381, subd. (f)(1).) California law defines consent consistent with federal regulations. (34 C.F.R. § 300.9; Ed. Code, § 56021.1.) To obtain parental consent for assessment, the district must first provide proper notice to the student's parents. (20 U.S.C. § 1414(b)(1); 34 C.F.R. § 300.304(a); Ed. Code, §§ 56321, subd. (a), 56506, subd. (e).) Proper notice consists of a proposed assessment plan and a copy of the parental rights and procedural safeguards under the IDEA and related state laws. (20 U.S.C. §§ 1414(b)(1), 1415(c), (d); 34 C.F.R. § 300.503; Ed. Code, §§ 56321, subds. (a), (b), 56329.) A prior written notice provides parents notice of a district's proposal or refusal to initiate or change a student's identification, assessment, or educational placement, or provision of FAPE to the student. (20 U.S.C. § 1414(b)(3), (c)(1); 34 C.F.R. § 300.503(a), (b); Ed. Code, § 56500.4, subds. (a), (b).)

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On August 30, 2024, Soledad provided Parents with an assessment plan and a copy of the notice of procedural safeguards. On September 25, 2024, Soledad provided Parents a prior written notice proposing to reassess Student, with copies of the August 30, 2024 assessment plan and the notice of procedural safeguards. On October 7, 2024, Soledad provided Parents a prior written notice granting an independent psychoeducational assessment, with a copy of the independent educational assessment policies attached. On October 23, 2024 and November 18, 2024, Soledad provided Parents with prior written notices about the August 30, 2024 assessment plan, independent psychoeducational assessment, and request for consent to the August 29, 2024 IEP, with copies of the assessment plan, the notice of procedural safeguards, and the independent educational assessment policies. These documents were missing several required components of notice required under Education Code section 56329.

The assessment plan must be accompanied by a written notice explaining limiting factors on special education eligibility, meaning that a student will not qualify for special education because of a lack of appropriate instruction in reading or mathematics, or limited-English proficiency, or does not otherwise meet special education eligibility criteria. (Ed. Code, § 56329, subd. (a)(2).) Neither the August 30, 2024 assessment plan, nor the accompanying notice of procedural safeguards, nor the prior written notices explained these limiting factors on special education eligibility to Parents.

Soledad was also required to notify Parents in writing that Parents would receive a copy of the assessment report and documentation of the eligibility determination. (Ed. Code, § 56329, subd. (a)(3).) Soledad did not provide Parents this notice in or with the August 30, 2024 assessment plan. Soledad's notice of procedural safeguards

informed Parents of their right to receive documents, including assessment reports, five days prior to a due process hearing. However, the right to receive documents before a hearing is a separate right. Notifying Parents of this right did not satisfy Soledad's requirement to notify Parents that they would receive a copy of the assessment report and documentation of the determination of eligibility upon completion of assessments pursuant to the August 30, 2024 assessment plan. Soledad's independent educational assessment policies provided with the prior written notices dated October 7, 2024, October 23, 2024, and November 18, 2024 informed Parents that independent assessors must provide a written report of the independent educational assessment prior to an IEP team meeting. However, independent assessment reports are different from reports to be generated after the assessments conducted pursuant to Soledad's August 30, 2024 assessment plan. These prior written notices did not satisfy Soledad's notice requirement under Education Code section 56329, subdivision (a)(3).

Soledad's notice of procedural safeguards and independent educational assessment policies provided with the prior written notices dated October 7, 2024, October 23, 2024, and November 18, 2024, informed Parents of their rights regarding independent educational assessments obtained at public expense, in accordance with Education Code section 56329, subdivision (b). Those documents notified Parents that they maintained the right for an independent educational assessment, at private expense, if it was determined after a due process hearing that the district's assessments were appropriate. (Ed. Code, § 56329, subd. (c).) The documents also notified Parents that if Parents obtained an independent assessment at private expense, the private assessor may observe Student in the current educational setting and any proposed setting, if the district's assessors were afforded those opportunities. (*Ibid.*) The

documents informed Parents that independent assessments must be considered. (*Ibid.*) However, Soledad failed to notify Parents that the results of a private assessment may be presented as evidence at a due process hearing regarding Student. (*Ibid.*)

The written notice accompanying the assessment plan must inform parents of a district's observation rights where the parents propose a publicly financed placement at a nonpublic school, or where a student is unilaterally placed in a nonpublic school by the parents. (Ed. Code, § 56329, subd. (d).) Soledad failed to notify Parents that if Parents proposed a publicly financed nonpublic school placement for Student, or unilaterally placed Student in a nonpublic school, that Soledad would have an opportunity to observe the placement and Student at the placement. (*Ibid.*) Soledad did not notify Parents that observations at the nonpublic school would only be of Student, and would not include an observation or assessment of any other student in the proposed placement, unless that student's parent consented. (*Ibid.*) Soledad did not notify Parents that the results of any improper observation or assessment of any other student was inadmissible in a due process hearing regarding that student. (*Ibid.*)

The IDEA requires that a procedural safeguards notice includes a full explanation of the procedural safeguards available under Title 20 United States Code section 1415. (20 U.S.C. § 1415(d)(2).) Soledad's notice of procedural safeguards informed Parents that a request for due process hearing must be filed within two years from the date they knew or should have known about the alleged action that forms the basis of the due process complaint. (20 U.S.C. § 1415(b)(6)(B).) However, the notice failed to inform Parents about exceptions to the two-year timeline. (20 U.S.C. § 1415(b)(6)(B), (d)(2),

(f)(3)(D).) It was insufficient to simply cite “20 USC 1415[f][3][A]-[D]” in its notice of procedural safeguards, without mention of the exceptions to the statute of limitations because it did not fully, in an easily understandable manner, explain the period in which Parents were required to make a complaint. (20 U.S.C. § 1415(d)(2)(E)(i).) The notice of procedural safeguards also failed to inform Parents about any model forms available to assist them in filing a complaint and due process complaint notice. (20 U.S.C. § 1415(b)(8), (d)(2)(E).)

Soledad’s written notice failed to comply with all procedural requirements. Parents could not provide informed consent because Soledad’s notice to Parents was defective. (34 C.F.R. §§ 300.9, 300.300(c)(1); Ed. Code, § 56381, subd. (f)(1).) Thus, it is unnecessary to determine whether Soledad made reasonable efforts to obtain the informed consent required to proceed without Parents’ signed consent. (34 C.F.R. § 300.300(c)(1)(ii), (d)(5); Ed. Code, § 56381, subd. (f)(1), (2).)

Further, given the defects of the assessment plan and the accompanying written notice, it is unnecessary to analyze whether other components of the assessment plan were compliant, including the qualifications of the proposed assessors for the other areas of assessment. Soledad is not authorized to conduct assessments pursuant to the August 30, 2024 assessment plan without parental consent.

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.

Soledad may not assess Student pursuant to the August 30, 2024 assessment plan without Parents' consent.

Student prevailed on the Issue at hearing.

ORDER

Soledad may not assess Student pursuant to its August 30, 2024 assessment plan without Parents' consent.

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.

Jeanie Min

Administrative Law Judge

Office of Administrative Hearings