

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

SIMI VALLEY UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2025050409

DECISION

JULY 11, 2025

On May 9, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request, called a complaint, from Simi Valley Unified School District, called Simi Valley, naming Parent on behalf of Student. Administrative Law Judge Sabrina Kong heard this matter by videoconference on June 3 and 4, 2025.

Attorneys Sheryl Bailey and Dee Anna Hassanpour represented Simi Valley. Simi Valley's Assistant Superintendent Sean Goldman attended all hearing days on Simi Valley's behalf. No one attended the hearing on Student's behalf.

At Simi Valley's request, the matter was continued to June 26, 2025, for written closing briefs. Simi Valley timely filed a closing brief. Student did not submit a closing brief. OAH closed the record and submitted the matter on June 26, 2025.

ISSUE

May Simi Valley conduct a triennial reevaluation of Student pursuant to its December 13, 2024 assessment plan without Parent's consent?

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

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.) All future citations to the Code of Federal Regulations are to the 2006 version, unless otherwise noted. 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 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, 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).) As the filing party, Simi Valley had the burden of proof on its issue. 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 14 years old and in the eighth grade at the time of hearing. Student attended the Academy for Advancement for Children with Autism, a non-public school, called the Academy. Student resided with Parent within Simi Valley's geographic boundaries at all relevant times. Student was eligible for special education under the primary eligibility category of other health impairment because of Lennox-Gastaut Syndrome, a severe form of epilepsy, and the secondary eligibility category of autism. Symptoms of Lennox-Gastaut Syndrome exhibited by Student included developmental delays, postural and mobility issues and severe seizures.

The IDEA uses the term reevaluation and California statutes use the term reassessment. The terms reevaluation and reassessment have the same meaning and are used interchangeably in this Decision.

ISSUE: MAY SIMI VALLEY CONDUCT A TRIENNIAL REEVALUATION OF STUDENT PURSUANT TO ITS DECEMBER 13, 2024 ASSESSMENT PLAN WITHOUT PARENT'S CONSENT?

Simi Valley contends it was required to assess Student every three years. Simi Valley further contends it required updated assessments because of Student's complex and evolving health, developmental and behavioral needs. Simi Valley also contends it met all procedural requirements entitling it to assess Student pursuant to the December 13, 2024 proposed assessment plan.

Student did not participate or offer any evidence at hearing to inform OAH of his contentions. Based on the evidence presented, Parent did not want Student assessed and did not consent to the proposed December 13, 2024 assessment plan.

School district evaluations of students with disabilities under the IDEA serve two purposes:

- identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and
- helping IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.)

The first purpose refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter purpose refers to the follow-up or repeat evaluations that occur throughout the course of the student's educational career. (See 71 Fed. Reg. 46640 (Aug. 14, 2006).)

The IDEA provides for reevaluations, referred to as reassessments in California, to be conducted not more frequently than once a year unless the parent and school district agree otherwise, but at least once every three years unless the parent and school district agree that a reevaluation is not necessary. (20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).) A reassessment must be conducted more often than once every three years if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reassessment, or if the student's parents or teacher requests a reassessment. (20 U.S.C. § 1414(a)(2)(A)(i) & (ii); 34 C.F.R. § 300.303(a)(1) & (2); Ed. Code, § 56381, subd. (a)(1); *M.S. v. Lake Elsinore Unified School Dist.* (9th Cir. 2017) 678 Fed. Appx. 543, 544 (nonpub. opn.) [no duty to reassess before the three-year reevaluation was due even where school district concluded the student's behaviors had worsened and were not being addressed sufficiently by the behavior plan].)

Reassessment generally requires parental consent. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(1)(i); Ed. Code, § 56381, subd. (f)(1).) To start the process of obtaining parental consent for a reassessment, the school district must provide proper notice to the student and parents. (20 U.S.C. §§ 1414(b)(1), 1415(b)(3) & (c)(1); Ed. Code, § 56321, subds. (a) & (b).) The notice consists of the proposed assessment plan and a copy of parental rights and procedural safeguards under the IDEA and companion state law. (*Ibid.*) The proposed assessment plan is required to contain certain information, including but not limited to, an explanation of the types of assessments to be conducted. (Ed. Code, § 56321, subd. (b).) The assessment may begin immediately upon receipt of the parent's consent but must generally be completed within 60 days. (20 U.S.C. § 1414(a)(1)(C); Ed. Code, §§ 56043, subds. (c) & (f), 56302.1, subd. (a), 56321, subd. (c)(4).)

The assessment plan must be in a language easily understood by the general public. It must be provided in the native language of the parent or other mode of communication used by the parent. It must also explain the types of assessments the school district proposes to conduct and state that an IEP will not result from the assessment without the consent of the parent. (Ed. Code, § 56321, subds. (b)(1)-(4).) The school district must give the parent 15 days to review, sign, and return the proposed assessment plan. (Ed. Code, § 56321, subd. (a).)

Informed parental consent need not be obtained for the reassessment of an individual with exceptional needs if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent and the parent of the child has failed to respond. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).) Consent means the parent has been fully informed, in the parent's native language, of all information relevant to the activity for which consent is sought, the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. (34 C.F.R. § 300.9(a), (b).)

Prior written notice is required to be given by the public agency to parents of a child with exceptional needs, upon initial referral for assessment, and a reasonable time before the public agency initiates or changes, or refuses to initiate or change, the identification, assessment, or educational placement of the child, or provisions of FAPE. (Ed. Code, § 56500.4, subd. (a).) The notice is required to include a description of the action proposed, and an explanation why the agency proposes the action. (Ed. Code, § 56500.4, subd. (b)(1), (2).) It must also contain a description of each assessment procedure, assessment, record, or report used as a basis for the proposed action. (Ed. Code, § 56500.4, subd. (b)(3).)

Further, a prior written notice must include a statement that the parents of the individual with exceptional needs have protection under the procedural safeguards, the means by which a copy of the description of the safeguards can be obtained, and sources for parents to contact to obtain assistance. (Ed. Code, § 56500.4, subd. (b)(4), (5).) The notice must also include a description of any other options that the IEP team considered and the reasons why those options were rejected, and other factors relevant to the proposal or refusal of the agency. (Ed. Code, § 56500.4. subd. (b)(6).)

If a parent does not consent to a reassessment plan, the school district may, but is not required to, request a due process hearing to obtain permission to conduct the reassessment without parental consent by establishing that the assessment is necessary and that the school district is lawfully entitled to reassess the student. (20 U.S.C. § 1414(c)(3); 34 C.F.R. § 300.300(c)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), 56506 subd. (e).)

CIRCUMSTANCES WARRANTED REASSESSMENT OF STUDENT IN ALL AREAS SPECIFIED IN THE DECEMBER 13, 2024 PROPOSED ASSESSMENT PLAN

Simi Valley proved Student required reassessment. First, Simi Valley must assess Student at least once every three years. Student was last assessed in March 2022, and his three-year reassessments were due by March 2025. Therefore, Simi Valley was legally required to reassess Student.

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Secondly, all witnesses at hearing persuasively opined Student required updated multi-disciplinary assessments to inform the IEP team on Student's evolving complex needs. Student's complex needs impacting his education included his health, autistic-like behaviors, and delays in

- cognition,
- adaptive behaviors,
- communication,
- socialization and
- daily living skills.

Student exhibited maladaptive behaviors including aggressive behaviors when engaged in non-preferred tasks and when waiting for preferred activities or items. Student also engaged in self-injurious behaviors such as biting his own hand and pushing those who presented him with demands. Student's disability interfered with his ability to:

- Understand and follow directions;
- Maintain alertness to instructional activities; and
- Participate and interact with adults and peers to access all curriculum areas.

Student required significant supports and modifications to access his education.

On or around December 13, 2024, Simi Valley sent the December 13, 2024 proposed assessment plan to Parent, proposing to assess Student in:

- Pre-academic/academic achievement by a special education teacher to determine Student's current reading, writing, and math skills;

- Social/emotional behavior by a psychologist to evaluate Student's
 - behavior,
 - social and emotional function,
 - relationships,
 - attention,
 - executive function,
 - resilience and
 - mood;
- Self-help/adaptive skills by a psychologist to evaluate how Student functions in daily activities for the educational setting;
- Motor skills development by an occupational therapist, a physical therapist, and an adapted physical education specialist to evaluate Student's small and large motor function and psycho-motor skills for the educational setting;
- Language/speech/communication development by a speech and language pathologist to determine Student's ability to understand, relate and use language and speech clearly and appropriately;
- Intellectual development by a psychologist to determine how well Student recalls what he has seen and heard and how well Student uses information to solve problems;
- Health by a school nurse to evaluate development patterns and health status relating to school function; and
- Special circumstances educational support by a psychologist and a school nurse to determine Student's paraprofessional needs.

Simi Valley's school psychologist for nine years Dr. Wilda Laija-Rodriguez developed the December 13, 2024 proposed assessment plan. Dr. Laija-Rodriguez had over 25 years of experience as a licensed educational psychologist in California. She held a master's degree in psychology, a doctorate degree in educational psychology, and conducted numerous psychological assessments.

Dr. Laija-Rodriguez was knowledgeable and familiar with Student's profile and needs. She reviewed Student's IEP, educational records and considered the services Student received. She also familiarized herself with Student's needs which included consulting with Simi Valley's program specialist Jodi Loomis who oversaw Student's education at the Academy. Therefore, Dr. Laija-Rodriguez was qualified to develop the December 13, 2024 proposed assessment plan and opine on the assessments Student required.

At hearing, Dr. Laija-Rodriguez opined Student required updated assessments in all areas of the December 13, 2024 proposed assessment plan because it had been over three years since Simi Valley last assessed Student. She also opined Lennox-Gastaut Syndrome impacted many aspects of Student's evolving educational access.

Dr. Laija-Rodriguez persuasively opined Student required assessments in:

- Social/emotional behavior to determine Student's social emotional and behavioral needs because of changing and increasing aggressive tendencies Student demonstrated at the Academy;
- Self-help/adaptive skills to determine Student's evolving independence;

- Intellectual development to determine changes to Student's ability to process and retain information so appropriate services could be offered for educational access at the Academy; and
- Special circumstances educational support to determine the type and level of supports Student would need from others for educational access including from his two paraprofessionals.

Program specialist Loomis oversaw special education services and supports at various school sites. She also handled referrals and coordinated IEP team placements of students at non-public schools and residential treatment centers. Student was one of approximately 30 students on Loomis' caseload. Her duties included observing Student at the Academy and attending Student's IEP team meetings.

Loomis was qualified to opine on Student's special education needs because of her experience, expertise and familiarity with Student's needs. She held a master's degree in special education and a special education teaching credential to teach students with moderate to severe disabilities. Further, Loomis observed Student at the Academy three times during the 2024-2025 school year, specifically in November 2024, February 2025 and May 2025.

Loomis described Student as big, very tall, constantly growing and highly impacted by his disability. She opined Student needed updated academic achievement assessments to determine his curriculum access needs. She also opined Student required updated assessments because he had grown significantly since he was last assessed in 2022. Student was severely impacted by epilepsy and seizures, had difficulty keeping his

head up and sitting in his chair and required hand-over-hand support for academic and non-academic activities. He also exhibited increasing maladaptive behaviors outside the classroom during the school day, including:

- Moving in the opposite direction from adults and his two paraprofessionals;
- Falling to the floor to grab a desired item; and
- Escalating behaviorally when adults stopped him from falling.

Loomis explained Student's weight and height changes affected his postural strength and coordination. Student's physical growth became increasingly difficult to manage. Because of his significant growth, Student required stronger adults for support when he had seizures, when he walked and to prevent him from dropping to the ground.

Loomis concluded Student's increased behavioral needs, health concerns and significant delays in all academic and non-academic areas justified updated reassessments as specified in the December 13, 2024 proposed assessment plan. Loomis' opinions were persuasive because she was knowledgeable about Student's needs. Further, Loomis' opinions were corroborated by all the witnesses who testified at hearing. Every witness opined Student required an updated multi-disciplinary reassessment, including in each witness' specific area of expertise, as discussed below.

SCHOOL NURSE SUPPORTED REASSESSMENT

Lisa Kelly was a California licensed registered nurse and a credentialed school nurse. She worked for Simi Valley as a school nurse for 20 years. Kelly's duties as a school nurse included conducting health assessments, attending IEP team meetings, training school staff on emergency and health plans, attending to medication needs and

to seizure care of students assigned to her at three school sites. She was also responsible for assessing and attending IEP team meetings for non-public school students to provide information to the IEP team after assessment. Kelly was qualified to opine regarding school related health assessments.

Simi Valley assigned Kelly to assess Student's health at the Academy. She was familiar with Student's health profile and needs from reviewing Student's records and the February 27, 2025 IEP. Kelly also knew Student through Parent. Kelly and Parent were colleagues at a Simi Valley school site. Kelly's experience and knowledge about Student's health profile and its impact on Student's educational needs rendered her opinions persuasive.

Kelly opined Student required reassessments to provide Student's IEP team updated comprehensive information to determine the appropriate services for Student, including development of a health plan to address Student's complex and evolving health needs. The last Health and/or Emergency Care Plan for Student was developed on June 21, 2024. On December 27, 2024, Student received a replacement Vagus Nerve Stimulator implant. Kelly described in detail the effects of Lennox-Gastaut Syndrome and the Vagus Nerve Stimulator on Student. At hearing, she testified the Vagus Nerve Stimulator, implanted in Student's chest, sent pulses to Student's brain during a seizure when his heart rate was elevated. Kelly explained a magnet would be swiped over the Vagus Nerve Stimulator which initiated pulses to shorten or stop Student's seizures. Kelly concluded Student required a health assessment so all of Student's health developments, including the replacement Vagus Nerve Stimulator implant, could be considered and incorporated in an updated IEP which was crucial to keeping Student safe at school.

Kelly also opined that Student's complex health needs affected Student's access to his education. For example, after seizures Student was unable, or too tired, to work. Jaime Castaneda, Student's adapted physical education teacher at the Academy, also shared this opinion.

STUDENT'S ADAPTED PHYSICAL EDUCATION TEACHER SUPPORTED REASSESSMENT

Castaneda had over 10 years of physical education experience working at various school districts and at the Academy. He held a master's degree in physical education, a physical education teaching credential and an authorization to provide adapted physical education to students. His duties at the Academy included assessing students in adapted physical education, attending IEP team meetings and providing direct adapted physical education services to students. Castaneda was qualified to opine regarding adapted physical education.

Castaneda did not conduct any formal or standardized assessments of Student. However, Castaneda provided adapted physical education to Student at the Academy and was knowledgeable about Student's needs. Therefore, his opinions were persuasive.

Castaneda shared Student's seizures impacted Student's ability to access and participate in adapted physical education. Although he only observed Student seizing once, Castaneda explained he often had to change Student's adapted physical education activities after Student experienced a seizure. These changes included postponing an activity, adjusting the intensity of the activity or canceling the activity. He shared Student

required extensive supports from two paraprofessionals or aides. He also required a gait trainer with a seat and straps for postural support, safe mobility and to complete adapted physical education tasks such as walking and moving.

Castaneda opined special education students were reassessed every three years and Student had not been formally assessed in three years. Castaneda testified that an updated adapted physical education assessment would help him develop appropriate adapted physical education goals to meet Student's evolving needs. As Student's adapted physical education teacher and service provider, Castaneda provided Student's present levels of performance and proposed goals to the IEP team based on informal observations of Student. Castaneda also opined that having updated multi-disciplinary formal assessments would provide the IEP team with needed information to determine appropriate and comprehensive services to Student.

STUDENT'S OCCUPATIONAL THERAPIST SUPPORTED REASSESSMENT

Academy's director of occupational therapy services Laura Herrell held a clinical doctorate degree in occupational therapy and was a California licensed occupational therapist. Herrell reviewed Student's 2022 multi-disciplinary assessment report, provided direct occupational therapy services to Student at the Academy for the prior three school years, and was knowledgeable about Student's needs. Therefore, she was qualified to opine regarding Student's motor skills and function and her opinions were persuasive.

Herrell opined special education students must be reassessed every three years. She testified Student's needs changed since his last assessment in 2022. Student grew taller and exhibited increased maladaptive behaviors which interfered with his engagement during occupational therapy sessions in the 2024-2025 school year. She opined Student's autistic-like behaviors and seizure disorder continued to affect his skills, change tolerance and developmental level. Student had significant needs in bilateral coordination, fine motor, manual dexterity, motor coordination and gradation of force usage for school tools, all of which impacted his educational access. She concluded that updated multi-disciplinary assessments, including a new occupational therapy assessment, would offer an expanded view of Student's needs integral for accessing his education.

STUDENT'S PHYSICAL THERAPIST SUPPORTED REASSESSMENT

Ventura County Office of Education's Special Education Local Plan Area's, called Ventura County, program specialist and physical therapist for 10 years, Melbourne Aquino, held a doctorate degree in physical therapy and worked as a physical therapist for 26 years. She conducted over 500 physical therapy assessments. Her duties at Ventura County included providing direct physical therapy services and conducting assessments at various school districts and non-public schools. Aquino provided physical therapy to Student during the 2023-2024 school year at the Academy. She was knowledgeable about Student's educational needs. Therefore, she was qualified to opine regarding Student's motor skills and function and her opinions were persuasive.

Aquino also opined Student required updated multi-disciplinary assessments. She echoed Castaneda's description of Student's extensive reliance on a gait trainer and

support from two paraprofessionals or aides. She described Student's walk as unsteady, not fluid and, at times, crossing steps and dropping to the floor unexpectedly when she worked with Student in the 2023-2024 school year. Student also had an adaptive chair with armrests, trays and seatbelts for trunk support to keep him upright when seated.

At hearing, Aquino shared Student needed a physical therapy assessment to monitor the extent of Student's physical changes such as leg, thigh and trunk growth. Despite having had a physical therapy assessment in February or March 2024, Aquino opined the assessment only focused on Student's gross motor skills. She also opined that a comprehensive physical therapy assessment would determine if Student required adjustments to his existing adaptive equipment and whether he needed new adaptive equipment. She also testified that multi-disciplinary assessments and collaborations with other specialists were needed to comprehensively accommodate Student's evolving educational needs.

SPEECH AND LANGUAGE ASSESSOR SUPPORTED REASSESSMENT

Simi Valley's speech and language pathologist for 12 years, Shari Palermo held a master's degree in communicative disorders and was a credentialed and licensed speech and language pathologist in California. Her duties included conducting speech and language assessments, attending IEP team meetings and providing speech and language services to students in two of Simi Valley's schools. She also assessed students in non-public schools.

Palermo typically assessed students' abilities to produce speech sounds, understand speech and express themselves. She also consulted with teachers to

determine if other areas of students' speech and language skills required an assessment. She often determined during assessment if additional assessments were needed to supplement, or confirm, suspected speech and language deficits. Palermo was qualified to opine about speech and language assessments.

Simi Valley assigned Palermo to assess Student at the Academy. Palermo reviewed Student's IEP for the 2024-2025 school year and opined it was appropriate to assess Student's speech and language needs because Student received speech and language services and had not been assessed in over three years. Therefore, the IEP team needed updated information to offer speech and language services that continued to meet Student's evolving needs.

Simi Valley proved that the areas specified in the December 13, 2024 proposed assessment plan were appropriate for reevaluating Student's educational needs. Simi Valley also proved that Student had not been assessed in over three years and the IEP team required updated information to appropriately meet his complex and evolving educational needs.

SIMI VALLEY GAVE PROPER NOTICE OF THE DECEMBER 13, 2024 PROPOSED ASSESSMENT PLAN TO PARENT AND THE PROPOSED ASSESSMENT PLAN COMPLIED WITH PROCEDURAL REQUIREMENTS

Simi Valley provided proper notice of the December 13, 2024 proposed assessment plan to Parent and the proposed assessment plan complied with the law. The notice consisted of the December 13, 2024 proposed assessment plan, a copy of the parent rights and procedural safeguards, and a one-page referral document.

All notice documents were provided to Parent in English, Parent's native language. The December 13, 2024 proposed assessment plan was in a language easily understood by the general public. It explained the types of assessments Simi Valley proposed to conduct and identified the specialist evaluator for each assessment. The language on the plan complied with the requirement that an IEP would not result from the assessment without Parent's consent. It also stated that Parent would be invited to attend the IEP team meeting to discuss the results and that no special education services would be provided to Student without Parent's written consent. The plan provided Parent at least 15 days to review, sign and return the proposed assessment plan.

Accompanying the assessment plan and notice of procedural safeguards, was a referral document which explained that every three years a review known as a triennial reevaluation must be conducted to determine:

- Whether a student continues to have a disability;
- The present levels of academic achievement and related developmental needs;
- Whether a student continues to need special education and related services; and
- Whether any additional or modifications to the special education and related services to meet annual IEP goals and participate in the general curriculum were needed.

The referral document further explained that at the last annual IEP team meeting, the IEP team determined Student required additional assessments based on Parent's input, classroom-based assessments and observations by Student's teachers and related

service providers. The referral document informed Parent of the right to request additional assessment than those in the December 13, 2024 proposed assessment plan and to call Dr. Laija-Rodriguez with any questions. It stated the three-year reevaluation and IEP team meeting would be scheduled no later than March 3, 2025, and requested that Parent sign the enclosed December 13, 2024 proposed assessment plan.

Simi Valley proved it gave appropriate notice to Parent of the December 13, 2024 proposed assessment plan as required by law. It also proved the proposed assessment plan complied with all legal requirements.

SIMI VALLEY TOOK REASONABLE STEPS TO OBTAIN PARENT'S CONSENT

Simi Valley attempted to obtain Parent's consent to assess Student in the areas specified in the December 13, 2024 proposed assessment plan since December 13, 2024. The bottom of the December 13, 2024 assessment plan provided:

I understand the purpose of the proposed assessment plan and have received a copy of my Parent Rights. I authorize the use of a suitable interpreter or prerecorded tests in my child's primary language as appropriate. I further understand that no [IEP] will result from this assessment without my consent. The box(es) checked below indicated my decision(s).

One box option gave Simi Valley permission to assess and the other box option denied Simi Valley permission to assess Student.

When Parent did not respond to the proposed assessment plan sent to Parent around December 13, 2024, Simi Valley resent the December 13, 2024 proposed assessment plan to Parent with a copy of the parent rights and procedural safeguards and the referral document numerous times by email, regular mail through the United States Post Office, by DocuSign and by the Special Education Local Plan Area information records and analysis support system.

On February 4, 2025, Simi Valley sent a notice to Parent of the three-year reevaluation IEP team meeting for February 13, 2025. On February 13, 2025, shortly before the IEP team meeting was scheduled to start, Parent emailed Simi Valley requesting to reschedule the meeting. Simi Valley convened the February 13, 2025 IEP team meeting to reschedule the IEP team meeting to February 27, 2025, to accommodate Parent.

Simi Valley reconvened the IEP team meeting on February 27, 2025, which Parent attended. Simi Valley provided Parent with a copy of the parent rights and procedural safeguards. Program specialist and IEP team meeting facilitator Loomis informed Parent that because Simi Valley had not received consent to reassess Student, the meeting would proceed as an annual IEP team meeting instead of a three-year reevaluation IEP team meeting. The IEP team discussed Student's progress during the past year, present levels of performance and proposed goals based on available information.

Simi Valley again sought permission to assess Student at the February 27, 2025 IEP team meeting. Parent declined to provide consent. When asked if she had any

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comments, questions or concerns during the IEP team meeting, Parent stated she would not permit assessment pursuant to the December 13, 2024 proposed assessment plan because:

- Simi Valley had previously assessed Student and Parent disagreed with Simi Valley's findings;
- She trusted the Academy; and
- She did not want to put Student through assessments again.

At the IEP team meeting, Loomis explained to Parent that the Academy's service providers and teachers gathered data regarding Student's function and present levels of performance to report on IEP goals progress, propose new IEP goals and to collaborate with the IEP team. Loomis clarified the Academy personnel did not conduct any formal or standardized assessments of Student which was required every three years. Despite Loomis' clarification, Parent continued to withhold her consent for Simi Valley to assess Student.

In February 2025, Parent returned the December 13, 2024 proposed assessment plan to Simi Valley. She checked the box denying Simi Valley permission to assess Student. In early March 2025, after receiving Parent's written denial to assess Student, Loomis called Parent on the phone attempting to obtain consent to reassess Student and to implement the February 27, 2025 IEP. During the telephone conversation, Parent did not agree to the reassessment or the IEP, but agreed to schedule another call with Loomis within a few days to continue their discussion. When Loomis called Parent for the scheduled phone conference a few days later, Parent did not answer.

On March 26, 2025, Simi Valley sent Parent a prior written notice requesting Parent's consent to the December 13, 2024 proposed assessment plan and the February 27, 2025 IEP. It also included a copy of the parent rights and procedural safeguards, a copy of each of the December 13, 2024 proposed assessment plan and the February 2025 IEP. Both the prior written notice and the proposed assessment plan described the proposed action, explained why Simi Valley proposed reevaluating Student and advised that Parents had protections under the procedural safeguards. The prior written notice and the parent rights and procedural safeguards included sources for parents to contact for assistance.

The prior written notice also summarized the importance of reassessing Student every three years and having an updated IEP. The notice also explained the options the IEP team considered in lieu of reassessments to update Student's IEP, and why those options were rejected. The prior written notice also detailed the numerous attempts taken by Simi Valley to obtain Parent's consent to the assessment plan and IEP. The prior written notice further informed Parent if Simi Valley did not receive consent for reassessment and to the February 2025 IEP by April 11, 2025, Simi Valley would obtain an order from OAH to reassess Student and to implement the IEP without Parent's permission.

On March 27, 2025, Parent consented to the February 27, 2025 IEP. However, Parent did not consent to the December 13, 2024 proposed assessment plan. More than 15 days elapsed from December 2024, when Simi Valley first sent Parent the December 13, 2024 proposed assessment plan, and May 9, 2025, the date Simi Valley filed its complaint with OAH. Simi Valley proved it took reasonable measures on numerous occasions to obtain Parent's consent to the December 13, 2024 proposed assessment plan, but Parent refused to consent.

Simi Valley proved it gave Parent proper notice of the December 13, 2024 proposed assessment plan and that the proposed assessment plan met all procedural requirements. Simi Valley also proved that all reassessments in the proposed assessment plan were warranted as discussed above.

Therefore, Simi Valley may reassess Student pursuant to the December 13, 2024 proposed 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.

Simi Valley may conduct a triennial reevaluation of Student pursuant to its December 13, 2024 proposed assessment plan without Parent's consent.

Simi Valley prevailed on its sole issue.

REMEDIES

Simi Valley requests permission to conduct a three-year reassessment of Student pursuant to the December 13, 2024 proposed assessment plan without Parent's consent. Simi Valley also requests an order that Parent make Student available for reassessment. Simi Valley further requests to be excused from providing Student a FAPE if Parent does not cooperate in making Student available for reassessment.

Parent stated at the February 27, 2025 IEP team meeting, she did not want Student reassessed by Simi Valley and denied consent to the December 13, 2024 proposed assessment plan.

Administrative Law Judges have broad latitude to fashion appropriate equitable remedies for FAPE denials. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 370 [105 S.Ct. 1996, 85 L.Ed.2d 385]; *Parents of Student W. v. Puyallup Sch. Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Puyallup*).) In remedying a FAPE denial, the student is entitled to relief that is "appropriate" in light of the purposes of the IDEA. (20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3).) Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Puyallup, supra*, 31 F.3d. at p. 1497.)

Simi Valley may conduct a reassessment of Student without parental consent pursuant to the December 13, 2024 proposed assessment plan in:

- Pre-academic/academic achievement;
- Social/emotional behavior;
- Self-help/adaptive skills;
- Motor skills development;
- Language/speech/communication development;
- Intellectual development;
- Health; and
- Special circumstances.

Parent shall make Student available for reassessment pursuant to the December 13, 2024 proposed assessment plan.

Simi Valley's request that it be excused from providing Student a FAPE if Parent does not cooperate to make Student available for reassessment improperly seeks an advisory opinion based on a hypothetical. Special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d 855] ["courts do not sit to decide hypothetical issues or to give advisory opinions"].) Therefore, Simi Valley's request to be relieved from providing Student a FAPE in anticipation of Parent not cooperating or making Student available for reassessment is denied.

ORDER

1. Simi Valley may conduct a three-year reassessment of Student pursuant to its December 13, 2024 proposed assessment plan without Parent's consent. Within 10 school days of the date of this Decision, Simi Valley shall notify Parent when reassessment will start so Parent could make Student available for reassessment.
2. Parent shall make Student available for reassessment pursuant to the December 13, 2024 proposed assessment plan and cooperate with reassessment. Parent's cooperation with reassessment shall include timely completing and returning any documents requested by the assessors as a part of the reassessment.
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.

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings