

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

SWEETWATER UNION HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

CASE NO. 2025120840

DECISION

MARCH 12, 2026

On December 19, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Sweetwater Union High School District, naming Student. OAH granted a continuance for good cause on January 9, 2026. Administrative Law Judge, called ALJ, Judith Pasewark heard this matter via videoconference on January 21, 22, 29, and February 4, 2026.

Attorneys Jonathan Read and Grady Jensen represented Sweetwater Union. Director of Special Services Michelle Sturm-Gonzalez attended the hearing on behalf of Sweetwater Union. Parent represented Student and attended all hearing days on Student's behalf.

At the parties' request, the matter was continued to February 23, 2026, for written closing briefs. The record was closed, and the matter was submitted on February 23, 2026.

At hearing, the ALJ reminded Parent that, as stated in the January 5, 2026 Order Following Prehearing Conference, the two issues presented in Sweetwater Union's complaint were the only issues subject to this Decision. Collateral issues of interest to Parent were not part of this hearing, nor could the ALJ consider Parent's independent requests for remedies which were not associated with the issues contained in Sweetwater Union's complaint.

For Parent's benefit, the two issues presented by Sweetwater Union were repeated throughout the hearing. This was done to remind Parent of the only issues being adjudicated in the hearing, as well as to assist Parent to focus on relevant questions and responses. At the end of testimony, the ALJ explained the closing brief process, repeated the issues, and requested that the parties only address the two issues as stated in the January 5, 2026 Order Following Prehearing Conference.

Nevertheless, Parent filed a closing brief which focused on Parent's allegations of a denial of a free appropriate public education, called FAPE, between July 2023 and September 2025, and requests for affirmative relief. Student's closing brief also attempted to relitigate evidentiary claims which had been determined in prehearing

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motions denying Parent's requests. Lastly, Student's closing brief heavily relied on the presentation of evidence which was not presented at hearing or offered into evidence at hearing. Student's closing brief was extremely limited in relevant content and persuasive argument.

## ISSUES

At the beginning of the first day of the due process hearing, the parties and the ALJ clarified that the date of the individualized education program, called IEP, in Sweetwater Union's Issue 1 was dated April 24, 2025, as amended on June 6 and 10, 2025.

1. Did Sweetwater Union's IEP, dated April 24, 2025, as amended on June 6 and 10, 2025, offer Student a FAPE in the least restrictive environment?
2. Is Sweetwater Union entitled to conduct an educationally related mental health services, called ERMHS assessment, pursuant to the February 20, 2025, and June 11, 2025, assessment plans without parental consent?

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## 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, called 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.)

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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).) Sweetwater Union 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 14 years old and in ninth grade at the time of hearing. Student resided within Sweetwater Union's geographic boundaries at all relevant times. Student was eligible for special education under the primary category of autism and secondary category of other health impairment pursuant to his September 6, 2022 IEP.

Student's last agreed upon IEP, dated September 6, 2022, and completed on September 14, 2022, was developed by Chula Vista Elementary School District in Student's sixth grade year and consisted of the following:

- eight annual goals in
  - reading
  - comprehension,
  - writing,
  - math,

- coping strategy,
- receptive, expressive, and pragmatic language, and
- fluency;
- an array of accommodations related to his unique needs;
- modifications for general education classes;
- 1,047 minutes per week of specialized academic instruction;
- 90 minutes per week of group speech and language services;
- 30 minutes per month of group occupational therapy;
- 30 minutes per week of group guidance and counseling;
- extended school year; and
- placement outside of the general education classroom 63 percent of the time.

Parent consented to the IEP on October 7, 2022.

At the beginning of the 2023-2024 school year, Student matriculated to Rancho Del Rey Middle School, within Sweetwater Union, for seventh grade.

On December 13, 2023, Parent consented to an amendment to the September 6, 2022 IEP, which changed Student's specialized academic instruction time from 1,040 minutes per week to 520 minutes per week. This amendment was designed to allow Student to transition to general education history and co-taught English instead of special education classes.

During Student's 2024 annual IEP team meeting on September 13, 2024, at Parent's request, the September 6, 2022 IEP was amended to include a new accommodation which allowed Student to be released early for lunch.

Parent did not consent to any other portion of the proposed 2024 IEP. Therefore, Sweetwater Union continues to implement Student's sixth grade IEP from September 6, 2022, as amended above.

Student matriculated to Otay Ranch High School for ninth grade for the 2025-2026 school year.

#### ISSUE 1: DID SWEETWATER UNION'S IEP DATED APRIL 24, 2025, AS AMENDED ON JUNE 6 AND 10, 2025, OFFER STUDENT A FAPE IN THE LEAST RESTRICTIVE ENVIRONMENT?

Parent failed to consent to a new annual IEP since October 7, 2022. Sweetwater Union contended that its April 24, 2025 IEP, as amended on June 6 and 10, 2025 offers Student a FAPE in the least restrictive environment. Therefore, Sweetwater Union requests that the April 24, 2025 IEP as amended, be implemented without parental consent.

Parent contended the April 24, 2025 IEP as amended did not provide Student a FAPE because it was based on faulty assessments and inflated grades, failed to provide sufficient counseling and safety for Student, and ignored Parent's request to place Student at Winston Academy, a non-public school.

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 appropriate progress 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 Sch. Dist. RE-1* (2017) 580 U.S. 386, 402 [137 S.Ct. 988, 1000].)

When, in the school district's judgment, the child is not receiving a FAPE, Education Code section 56346, subdivision (f), requires the school district to "act with reasonable promptness to correct that problem by adjudicating the differences with the parent." (*I.R. v. L.A. Unified Sch. Dist.* (9th Cir. 2015) 805 F.3d 1164, 1170.)

In implementing the IDEA, California requires that when a parent refuses consent to components of an IEP, and the school district determines those components are necessary to provide a FAPE to the child, the school district shall initiate a due process hearing. (Ed. Code, § 56346, subd. (f).) Sweetwater Union established that the April 24, 2025 IEP, as amended on June 6 and 10, 2025, offered Student a FAPE in the least restrictive environment, for the reasons discussed below.

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## ALL REQUIRED IEP TEAM PARTICIPANTS ATTENDED THE APRIL AND JUNE 2025 MEETINGS

The IEP is put together by the IEP team, consisting of a group of school officials, teachers, and parents. (*Fry ex rel. E.F. v. Napoleon Cnty. Schs.* 580 U.S.154, (2017) 137 S.Ct. 743, 749.) Each IEP team meeting shall include the parent, no less than one general education teacher if the student is participating in general education, and not less than one special education teacher of the student. The IEP team shall include a representative of the district who is qualified to provide specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources. The team shall also include an individual who can interpret the instructional implications of the assessment results. (Ed. Code, § 56341.)

Participants in an IEP team meeting may fulfill more than one role; it is not required that each role be filled by a different person. (34 C.F.R. § 300.321(a)(5) and (d); Ed. Code, § 56341, subds. (b)(5) and (e).)

On April 24, 2025, Sweetwater Union convened an IEP team meeting for Student, which was continued on June 6, 2025, and completed on June 10, 2025. Parent attended along with

- speech and language pathologists Nicole Ishihara, and Katherine Bristow,
- case manager Irma Renteria,
- occupational therapist Lance Miyashiro,
- psychology intern Elise Matos,

- program manager Eduardo Canett,
- general education teachers Royalee Kirby and Allison Hurley, and
- special education teacher Francisco Moya,

On June 6, 2025, the IEP team consisted of

- Parent,
- special education teacher Erika Avery,
- general education teacher Patricia Heredia,
- speech and language pathologist Robert McKinney,
- high school psychologist Andrea Lacuesta,
- program manager Canett,
- assistant principal Juan Neria, and
- psychologist on special assignment Sergio Campos.

On June 10, 2025, the IEP team consisted of

- Parent,
- Avery,
- Heredia,
- McKinney,
- Miyashiro,
- Canett, and
- Campos.

Sweetwater Union provided all required IEP team participants for Student's IEP team meetings. Each of the participants was qualified and knowledgeable in their areas of expertise.

Sweetwater Union established that it complied with statutory requirements for participants of an IEP team.

## ELEMENTS OF AN IEP

An IEP is a written document that states the child's present levels of academic achievement and functional performance, creates measurable annual goals for the child, describes the child's progress toward meeting the annual goals, and explains the services that will be provided to the child to help him advance toward attaining his goals. (*Timothy O. v. Paso Robles Unified School Dist.* (9th Cir. 2016) 822 F.3d. 1105, 1111; 20 U.S.C. § 1414(d)(1)(A)(i)(I), (IV)(aa).)

The IEP must comprehensively describe the child's educational needs and the corresponding special education and related services that meet those needs. (*School Comm. of Burlington v. Department of Educ.* (1985) 471 U.S. 359, 368 [105 S.Ct. 1996] (*Burlington*).) The IEP must identify the special education and related services and supplementary aids and services, including program modification or supports. (*Id.*, 471 U.S. at 368; 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.324(a)(2)(iv); Ed. Code, § 56345, subd. (a)(4).)

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The IEP team must consider the strengths of the child; the concerns of the parent for enhancing the education of the child; the most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (20 U.S.C. § 1414(d)(3)(A), citing, *Capistrano Unified School District v. S.W. and C.W. on behalf of their minor child B.W.* (9th Cir. 2021) 21 F.4th 1125, 1129-1130.)

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, a disability, must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1993) 993 F.2d 1031, 1041.)

## CONSIDERATION OF PARENTAL CONCERNS

The April 24, 2025 IEP included Parent's input and concerns relevant to Student's educational progress. Parent did not believe Student's grades reflected his true academic levels of performance; but believed the grades were inflated.

For the first semester of the 2024-2025 school year, Student earned A grades in three classes and B grades in three classes. Student received A's in citizenship in all classes. Second semester, Student's grades and citizenship dropped. Student received one A, and three B's. Student's English grade dropped from an A to a C. Student's citizenship grades also dropped to a B.

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Pursuant to Student's transcript, first term grades for the 2025-2026 school year dropped dramatically. Grades ranged from three A's and one B, to a D and an F. Student's drop in grades corresponded to his 81 absences from classes during the first semester.

In response to Parent's allegation of grade inflation, Gerardo Santamaria, Student's high school general education social science teacher, testified that he did not inflate Student's grade. Santamaria was a teacher with 20 years' experience and previously worked as an intervention specialist. Santamaria reported that Student earned his A. Santamaria emphasized that Student was a good, well-mannered student; he participated in class, completed group assignments with peers, and completed reading and writing assignments in class. Student used some of his accommodations but did not need all of them. Generally, Student was doing well in Santamaria's class. Student's grade dropped to a B due to excessive absences.

Chad Pearson, Student's ninth grade special education math teacher, testified at hearing. Pearson, who had over 20 years of experience as a special education teacher, was a highly qualified witness who exhibited a noted interest in Student's progress and success. Pearson denied inflating Student's grades. Student earned his A. Pearson reported that because Student was doing well and getting good grades, he was considering moving Student from the special education integrated math class to a co-taught algebra class to satisfy graduation requirements. Pearson did express concern regarding Student's severe number of absences.

Elizabeth Craighead, Student's eighth grade general education history teacher, testified at hearing. Craighead was a teacher at Sweetwater Union for 30 years and was experienced with implementing students' IEPs and often consulted with the special

education team. Craighead did not inflate Student's grades. Craighead, an exceptionally enthusiastic witness, found Student to be a smart kid with a great sense of humor. Student performed outstandingly in class and interacted with peers. Craighead acknowledged providing Student accommodations but reported that most were the same accommodations provided to all students in her class. Student's grade dropped because he did not finish a project.

Parent also expressed significant concerns regarding Student's social-emotional functioning and indicated that Student suffered from anxiety and was receiving private counseling services. The IEP team was well-aware of Parent's concerns regarding Student's alleged trauma and mental health issues.

Craighead, Santamaria, and Pearson all testified credibly, and spoke highly of Student. Each observed Student while in their classes and reported that Student was very respectful and interacted appropriately with others. While Student might be quiet in class, Student did not demonstrate behavior problems or anxiety.

Parent's testimony was not persuasive. Parent continued to make allegations without support which were not observed in the school setting. Each of the teachers described similar behaviors in both the general education setting and special education math class. The evidence supported the concerns of Student's teachers that his drop in grades was largely due to excessive absences.

## PRESENT LEVELS OF PERFORMANCE

An IEP must contain a statement of the student's present levels of academic achievement and functional performance, including the effects of the student's disability on the student's involvement and progress in the regular education curriculum. (20

U.S.C. § 1414(d)(1)(A)(i)(I); 34 C.F.R. § 300.320(a)(1); Ed. Code, § 56345, subd. (a)(1).)

The present levels of performance become baselines for designing educational programming, annual goals, and measuring a student's future progress toward annual goals.

Student's present levels of performance were determined based on Student's three-year psychoeducational assessment, observations, and teacher input.

Parent expressed extreme allegations of Student's fear and trauma at the hands of Sweetwater Union's school psychologists, and therefore, refused to allow them to administer Student's three-year psychoeducational assessment. To obtain relevant information regarding Student's current levels of performance, Sweetwater Union assigned Sergio Campos, a school psychologist on assignment, to act as a buffer with Parent.

Dr. Campos, a licensed educational psychologist, held a doctorate degree in educational psychology and a master's degree in school psychology, along with an administrative services and pupil personnel credentials. Dr. Campos was an excellent witness who exhibited a high level of competence and provided clarity and chronology in his testimony.

Given Parent's refusal to consent to a Sweetwater Union's psychoeducational assessment, Dr. Campos obtained the services of Dr. Pedro Olvera, a licensed educational psychologist, to conduct Student's three-year psychoeducational assessment on Sweetwater Union's behalf. Parent consented to Dr. Olvera assessing Student.

Dr. Olvera did not testify at hearing, however his March 14, 2025 psychoeducational assessment was admitted into evidence without objection, and was discussed by Dr. Campos at hearing. Dr. Olvera's assessment was comprehensive and was not disputed by Student at hearing.

Dr. Olvera assessed Student's sensory processing and determined that Student's phonetic coding was below average indicating difficulties in analyzing and manipulating the sounds of language, which are critical for reading and spelling. Student's visual processing was well below average indicating significant weakness in coordinating visual information with motor skills and overall visual processing.

Dr. Olvera assessed Student's central executive functioning. Student's short-term memory and working memory scores indicated average auditory, but below average visual scores, suggesting relative strength in processing information through hearing compared to seeing. Student's long-term storage and retrieval and delayed recall was average. Student's rapid retrieval/fluency was average.

Dr. Olvera assessed Student's verbal and nonverbal reasoning abilities. Student's fluid reasoning or nonverbal reasoning was average, however his crystalized intelligence or verbal reasoning was below average in oral areas, and average in listening comprehension.

Dr. Olivera assessed Student's academic skills. Student's reading composite scores on the Kaufman Test of Educational Achievement, third edition, fell within the average range; written language composite scores fell within the below average range; and math composite scores fell in the well below average range.

Dr. Olvera assessed Student's social-emotional status with the Connors Behavior Rating Scale given to both Parent and Student's teachers Carrillo and Hurst. Parent's responses indicated impairments for

- emotional distress,
- worrying,
- social problems,
- academic difficulties, I
- language,
- math, and
- physical problems consistent with
  - attention deficit hyperactivity disorder,
  - major depressive disorder,
  - generalized anxiety disorder,
  - social anxiety disorder, and
  - autism spectrum disorder.

Neither of Student's teacher ratings indicated any impairments or mental health symptoms observed at school.

Student's self-reporting on the Children's Depression Inventory, second edition, indicated an impairment and the presence of depressive symptoms. On the Multidimensional Anxiety Scale for Children, second edition, Student reported

significant anxiety with high scores in performance fears, generalized anxiety disorder, and tense/restless symptoms suggesting social, performance-related and generalized anxiety challenges.

Dr. Olvera assessed Student's executive functioning with the Comprehensive Executive Functioning Inventory administered to Parent and Student's teachers Carrillo and Hurst. Parent's scores indicated impairments in

- attention,
- emotion regulation,
- flexibility,
- inhibitor control,
- initiation,
- organization,
- planning,
- self-monitoring, and
- working memory.

Neither teacher indicated any impairment.

Dr. Olvera's psychoeducational assessment was presented at the April 24, 2025 IEP team meeting, and was a primary consideration in developing Student's present levels of performance as discussed below.

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## ACADEMICS

Student's reading was at or near grade level. Student demonstrated the ability to understand what he read. In the first semester of the 2024-2025 school year, Student averaged 93 percent on all reading assignments. In the second semester, Student dropped to 80.3 percent on assignments, mostly due to missed assignments while absent from school.

Student demonstrated the ability to write a complete paragraph which met all basic requirements. The only areas of concern in writing were some spelling and word choice mistakes. In fall 2024 Student's writing was appropriate for the eighth grade; Student only needed to double-check his final drafts. As of spring 2025, Student's essay writing contained everything required. He wrote to the task appropriately, included cited evidence, stayed on topic and formatted the writing appropriately.

During the 2024-2025 school year, Student had an in-class average of 100 percent in converting fractions to decimals, probability, basic operations with double and triple digits, and math equations. Student performed all calculations independently without a calculator or multiplication chart.

## SPEECH AND LANGUAGE

At the April 24, 2025 IEP team meeting, the team relied on the October 24, 2024 speech and language assessment conducted by Katherine Bristow to develop present levels of performance. Overall, she found Student's speech and language abilities were

within functional limits and did not impact his academic success. Bristow determined Student did not demonstrate a speech and language disorder as defined by Education Code section 56333.

Bristow held a master's degree in speech, language and hearing sciences. She was a licensed speech and language pathologist and held a certificate of clinical competence in speech and language pathology and a speech and language pathology services credential.

Bristow administered a thorough assessment. Bristow considered the assessment results to be a valid and reliable representation of Student's true skills and abilities. Bristow testified at hearing as a competent and well-informed witness who provided a clear and well-reasoned explanation of her assessment report and the reasons why she did not consider Student in need of speech and language services.

Student's general conversational ability was observed and informally measured. Student's expressive and receptive language, articulation, fluency, and voice were in the normal limits at conversational level. Student intermittently replaced the "th" sound with "f." For example, sometimes he said "teef" instead of "teeth," but it was not consistent across utterances and did not impact intelligibility.

Bristow noted that Student's verbal disfluencies were characterized by insertion of single sound or word repetitions, and intermittent restarts, many of which are common in students diagnosed with attention deficit hyperactivity disorder. She opined that attention deficit hyperactivity disorder can impact a person's general attention in

conversation and their ability to organize their thoughts. Given Student's attention deficit hyperactivity disorder, his disfluencies could be due to word retrieval and processing time. Nevertheless, Student's overall speech sounded natural, and disfluencies were not a distraction to the communication partner. Student could effectively convey his intended message.

Student opined during the assessment that his disfluencies did not impact his performance in class, nor did it impact his friendships. Student's teachers Craighead, Santamaria and Pearson concurred that Student's stuttering was not often apparent in class; Student actively participated in whole and small group activities; he self-advocated; and his disfluencies did not impact academic progress.

These opinions were further supported by the Goldman-Fristoe Test of Articulation, third edition, on which Student scored in the average range and made no errors in articulation of speech sounds.

Bristow administered the Stuttering Severity Instrument-4 assessment which measured the overt features of stuttering during conversational speaking as well as oral reading tasks. Student scored in the mild category, demonstrating an insignificant and fleeting stutter which did not impact his natural speech sound to the listener.

As a follow-up, Bristow administered the Overall Assessment of Speaker's (Student's) Experience of Stuttering, a ratings scale to identify how stuttering impacted Student. Overall, Student indicated he was mild/moderately impacted by his stutter, and that being rushed to communicate was his biggest challenge.

Bristow assessed Student's expressive, receptive, and pragmatic language as follows:

- the Expressive and the Receptive One-Word Picture Vocabulary Tests, fourth edition, identified Student's expressive and receptive vocabulary abilities. Student scored in the average range.
- the Clinical Evaluation of Language Fundamentals-5, comprehensively measured core language/overall language skills, receptive and expressive language, and language/vocabulary. Student scored in the average range.
- the Clinical Evaluation of Language Fundamentals-5, Metalinguistic test measured Student's ability to produce conversationally appropriate sentences, make inferences, understand lexical and structural ambiguity and understand figurative language. Student scored above average in making inferences and conversational skills and average in all other areas.
- the Test of Pragmatic Language-2, measured Student's ability to express feelings, make requests and problem solve. Student scored in the average range.
- the Clinical Evaluation of Language Fundamentals-5, Pragmatic Profile rated a series of positive social skills and behaviors. Student always or almost always acted or reacted in an appropriate manner.

- the Clinical Evaluation of Language Fundamentals-5 Metalinguistic Profile provided information about Student's verbal and nonverbal pragmatic skills that influenced social and academic communication. Student always or almost always acted in an appropriate manner, and scored in the average range.

As a result of her assessments, Bristow determined that speech and language was not an area of deficit for Student, and recommended termination of speech and language services. Student did not need pull-out services when he transitioned to high school; it unnecessarily impacted the least restrictive environment for Student. While Bristow did not believe Student needed the speech and language consultation as offered in the April 24, 2025 IEP, she concurred that it could not hurt.

## GROSS AND FINE MOTOR SKILLS

The IEP team determined that Student's gross and fine motor skills were within functional limits and did not impact his academic success. This determination was substantiated by the occupational therapy assessment, dated December 2, 2024, conducted by Lance Miyashiro. Miyashiro, a licensed occupational therapist, worked for the San Diego South County Special Education Local Plan Area for 24 years and was assigned to Sweetwater Union. Miyashiro provided Student's occupational therapy services to address his keyboarding, handwriting, and self-regulation skills pursuant to the 2022 IEP. At hearing, Miyashiro testified competently and his testimony was uncontradicted. At hearing, Parent also spoke highly of Miyashiro.

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When assessed by Miyashiro, Student's sensory profile scores fell within the typical range. Student displayed good attention to task and could follow multi-step directions.

Student's fine motor skills were within normal limits. His manual coordination and manual dexterity were above average. Student displayed good handwriting skills with 90 percent eligibility. Student's preferred keyboard skills surpassed his writing skills at 100 percent accuracy at 124.5 letters per minute. Student appropriately performed fine motor tasks within the school setting.

Based upon his assessment, Student did not qualify for occupational therapy services. Parent continued to question Student's penmanship. Miyashiro explained that Student wrote legibly when he took his time. Parent expressed concern that he was not contacted for occupational therapy input nor were visual motor skills addressed. Miyashiro reported that visual motor was not usually addressed outside of the Bruininks-Oseretsky Test of Motor Proficiency, second edition, which was administered, and a visual motor assessment was performed by the school psychologist. Further, assessment of fine motor skills was based upon assessment and work samples, not upon parental input.

## SOCIAL EMOTIONAL/BEHAVIOR

Based upon school observations and teacher interviews, the IEP team reported that Student appeared to be happy and comfortable on campus. Student was well-behaved, respectful, and kind to everyone. Student had friends, was observed to consistently advocate for himself, and independently participated in class and in the speech therapy setting. Teachers did not report concerns with Student's social emotional functioning and reported Student to be calm and well-regulated.

On the other hand, the March 14, 2025 psychoeducational assessment report indicated that Student's self-reporting on the Children's Depression Inventory, second edition, showed an impairment and the presence of depressive symptoms. On the Multidimensional Anxiety Scale for Children, second edition, Student reported significant anxiety with high scores in performance fears, generalized anxiety disorder, and tense/restless symptoms suggesting social, performance-related and generalized anxiety challenges.

### VOCATIONAL

Student displayed no vocational difficulties at school, knew his way around campus, and completed his work on time. Student expressed a desire to attend college.

### ADAPTIVE/DAILY LIVING SKILLS

Student could take care of his daily needs independently.

### HEALTH

Student had medical diagnoses of autism spectrum disorder and attention deficit hyperactivity disorder. Student passed a hearing and vision screening. Parent provided a doctor's letter indicating Student had a selective diet and required a set of preferred options from the cafeteria.

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## GOALS AND RELATED SERVICES

An annual IEP must contain a statement of measurable annual goals designed to:

- meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and
- meet each of the pupil's other educational needs that result from the individual's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2).)

Annual goals are statements that describe what a child with a disability can reasonably be expected to accomplish within a 12-month period under the child's special education program. (*Letter to Butler*, U.S. Dept. of Educ., Office of Special Education Rehabilitative Services (OSERS 1988); 213 IDELR 118; (Notice of Interpretation, Appendix A to 34 C.F.R., part 300, Question 4 (1999 regulations).)

Based upon the assessment findings and Student's present levels of performance, Sweetwater Union determined that Student required goals in writing, math, and social-emotional to receive educational benefit and progress in the general curriculum and state standards.

The IEP team crafted a writing goal. The baseline was based on Student's present levels in writing. The goal stated that by April 24, 2026, after reading material related to the writing assignment, handwriting or typing, with some guidance and support from peers and adults, Student will develop and strengthen his writing by reviewing his work

before turning it in and making appropriate corrections by planning, revising, editing, rewriting, or trying a new approach, focusing on writing conventions with not more than two errors per paragraph in at least two attempts.

The IEP team crafted a math goal. The baseline was based on present levels and teacher report. The goal stated that by April 24, 2026, Student would solve linear equations in one variable with at least 75 percent accuracy in two trials as measured by student work samples and teacher records. Student's math teacher Pearson opined this was a very appropriate goal for Student.

The IEP team crafted a coping skills goal. The baseline was based on the results of the Multidimensional Anxiety Scale for Children, second edition, self-report, which indicated Student may feel tense, restless or on edge, or anxious about public speaking. The goal stated that by April 24, 2026, both in the classroom and in counseling sessions, Student would accurately identify feelings and appropriate coping strategies when presented with real or imagined situations with 80 percent accuracy on four out of five trials as measured by the school psychologist or the ERMHS therapist's records.

The goals created for the April 24, 2025 IEP were appropriate. Each goal aligned with Student's present levels of performance and aligned with undisputed areas of need as determined in the findings of the three-year assessments. Student could also reasonably accomplish them in one year.

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## RELATED SERVICES

Related services under the IDEA means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services include, among many things, speech and language services, psychological services and counseling, and occupational therapy. (34 C.F.R. § 300.34(a).)

The IEP team offered specialized academic instruction in a separate classroom for 260 minutes per week. This was Pearson's math fundamentals class and sufficiently supported Student's math goal.

The IEP team offered specialized academic instruction in a regular classroom for 260 minutes per week. This was Student's co-taught English class which sufficiently supported Student's writing goal.

The IEP team offered counseling and guidance services in a separate classroom for 250 minutes per year. This supported Student's coping skills goal and provided Student access to the school psychologist and/or ERMHS therapist. Parent took issue with the counseling, as he understood that Sweetwater Union would allow "anyone" to provide counseling services. This was based on a misunderstanding of the regulation which broadly states that counseling services means services provided by a qualified social worker, psychologist, guidance counselor or other qualified personnel. (34 C.F.R. § 300.34 (c )(2).) Regardless, the coping skills goal proposed by the IEP team specifically stated the goal would be implemented by a school psychologist and/or an ERMHS therapist.

Student's teachers and Dr. Campos testified that the goals were appropriate for Student and covered all areas of Student's educational needs. The goals interrelated. As example, Pearson opined that the reading goal was also appropriate for math, as reading was involved in math problems. Pearson found Student's present levels of performance in reading to be accurate as they applied to his interaction with Student in math class. Parent's contention that the goals were insufficient was based upon his desire to maintain both speech and language and occupational therapy for Student. Student's arguments were not compelling.

The IEP also offered 60 minutes per year of speech and language consultation and 60 minutes per year of occupational therapy consultation with teachers to assist in Student's transition from exiting services in those areas.

Parent's contention that Student still required speech and language was based upon Student's speech impediment and medical diagnosis of autism. The evidence however, indicated that Student's stutter was mild and did not impact his learning or communications. Further, Student did not exhibit language deficits associated with children on the autism spectrum. Parent's contention regarding occupational therapy was based on Student's handwriting and medical diagnosis of autism. Again, Miyashiro's report and testimony indicated that continuing occupational therapy was unnecessary. Student's handwriting was legible, and Student did not exhibit sensory issues requiring intervention.

The IEP team determined Student did not require extended school year placement or services as he did not have a history of academic regression after summer break nor did he struggle to regain learned skills.

## ADDITIONAL SUPPORTS AND ACCOMMODATIONS

The IEP team determined Student required assistive technology devices and services in the form of an iPad or Chromebook with educational programs in the school setting. In addition, Sweetwater Union offered Student access to sensory supports and strategies such as adaptive seating and fidgets to support regulation and attention throughout the day.

The IEP team offered a series of accommodations to assist Student in the general education setting and other education-related settings. Many of these accommodations mirror the accommodations recommended by Dr. Olvera. Several of the accommodations also sought to support Student's speech and language concerns. Program accommodations included:

- provide Student extended time to complete assignments, homework and classwork;
- provide Student multiple or frequent breaks;
- provide Student extended time to "stop and think" while answering questions;
- obtain Student's attention before speaking;
- check for understanding of assignment directions by Student repeating instructions to the teacher;
- provide Student with a graphic organizer;
- frontload information to Student;
- provide Student with text-to-speech;

- provide directions in a variety of modalities;
- allow Student to leave for lunch early and allow Parent to drop off lunch;
- allow Student to retake tests when he scores below a C minus;
- allow Student to test in an alternative setting; and
- allow Student to use spellcheck on all assignments.

The April 24, 2025 IEP sufficiently identified the related services and supplementary aids and services offered to Student. Sweetwater Union established that Student no longer required speech and language services or occupational therapy to access his education, which was supported by the assessment reports and credible testimony of Bristow and Miyashiro. Parent provided no evidence to the contrary.

## PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

To the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature of severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (20 U.S.C. § 1412(a)(5).)

School districts must have available a continuum of program options to meet an eligible student's needs for special education and related services. (34 C.F.R. § 300.115; Ed. Code, § 56360.) A district must make a continuum of placement options available, but does not need to discuss every possible placement at every IEP team meeting. (See *L.S. v. Newark Unified Sch. Dist.* (N.D.Cal., May 22, 2006, No. C 05-03241 JSW))

2006 WL 1390661, pp. 5-6 [nonpub. opn]; *Katherine G. v. Kentfield Sch. Dist.* (N.D.Cal. 2003) 261 F.Supp.2d 1159, 1189-1190.) Only placement options that are likely to be relevant to a student's needs must be discussed.

The continuum of program options ranges from the least restrictive to the most restrictive, from general education settings to institutional settings. (Ed. Code, § 56361.) It is the duty of the IEP team to place students in the least restrictive environment in which they can be educated. (*Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.)

The April 24, 2025 IEP provided Student placement in the general education setting for 85 percent of his time in school. Fifteen percent of Student's time was scheduled for outside the regular classroom in the math fundamentals class. The IEP team determined that Student required small group instruction to make progress on his math goal.

The IEP team considered a continuum of placement options including general education, related services, resource specialist program, and special day class. The IEP team considered any harmful effects of placing Student in a mild to moderate special day class for math and determined that Student needed the small, structured environment provided outside of the regular classroom.

During the June 10, 2025 IEP team meeting, Parent expressed his frustration and disagreement with Sweetwater Union's offer of FAPE. Parent requested independent educational evaluations in psychoeducation and occupational therapy. Parent further requested that Sweetwater Union pay for Student to attend non-public school. Parent

requested placement at Winston Academy, a non-public school that served special education students, because he alleged Sweetwater Union was not fully implementing Student's IEP at Rancho Del Rey.

In response to Parent's concerns, the IEP team engaged in a further discussion of the continuum of placement and least restrictive environment. Dr. Campos explained that non-public school placement was not appropriate for Student because it did not comply with the least restrictive environment mandate based upon his needs. Placement at Winston Academy would remove Student from the general education environment and not allow Student to attend his neighborhood school. Dr. Campos informed Parent, on behalf of the IEP team, that the April 24 2025 IEP could be implemented at a Sweetwater Union school.

Sweetwater Union's offer of placement was appropriate and can be implemented on the high school campus. Throughout the 2023-2024 and 2024-2025 school years, Student's educational placement under the September 6, 2022 IEP as amended, remained in the general education classroom with pull out specialized academic instruction for math. The April 24, 2025 IEP, as amended, offered a comparable placement which would easily transfer to the high school setting. Further, the placement in the public-school setting constituted the least restrictive environment for Student. Parent failed to provide any evidence to support his claim that a more restrictive environment, like at a non-public school, was required for Student to access his education.

The evidence established that the April 24, 2025 IEP, as amended, offered Student a program of special education and related services, accommodations and supports that was appropriately based upon the information presented to the IEP team through

assessments, observations, and interviews. The IEP goals and services comported with Student's educational needs and present levels of performance. The IEP complied with statutory procedural obligations and offered Student a program that could enable him to make progress in his education in light of his circumstances.

Student failed to present credible testimony or evidence to contradict or challenge Sweetwater Union's witnesses and evidence at any point in the hearing. Instead, Parent focused on irrelevant issues, thereby effectively rendering Sweetwater Union's evidence unrefuted.

Therefore, Sweetwater Union may implement the April 24, 2025 IEP as amended without parental consent.

## ISSUE 2: IS SWEETWATER UNION ENTITLED TO CONDUCT AN ERMHS ASSESSMENT PURSUANT TO THE FEBRUARY 20, 2025 AND JUNE 11, 2025 ASSESSMENT PLANS WITHOUT PARENTAL CONSENT?

Sweetwater Union contended that an ERMHS assessment is necessary to determine Student's potential mental health needs to access his education, and to fulfill Parent's request for an ERMHS assessment.

Parent contended he wants an independent ERMHS assessment due to Student's fear of Sweetwater Union's assessors and anxiety on the high school campus. Furthermore, Parent contended Sweetwater Union's assessors have a conflict of interest in assessing Student due to trauma and abuse, as alleged by Parent.

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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.

A reassessment of the pupil in accordance with section 1414(a),(b), and (c) of title 20 of the United States Code, must 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).)

A reassessment may not be conducted unless the written consent of the parent is obtained prior to the reassessment, except pursuant to subdivision (e) of Education Code section 56506. (Ed. Code, § 56381, subd (f)(1).) Consent is required for an ERMHS assessment to be conducted to determine the special education needs of a child, because a mental health assessment constitutes an evaluation or reevaluation within the meaning of the IDEA.

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,

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558.) A parent must allow the school itself to reevaluate the student and cannot force the school to rely solely on an independent evaluation. (*Gregory K. v. Longview, supra*, 811 F.2d 2 1307, 1315.)

At hearing, the local education authority must establish that the proposed assessments are necessary and that it is lawfully entitled to conduct them. (34 C.F.R. § 300.300(c)(1)(ii); Ed. Code, §§ 56381, subd. (f)(3), 56501, subd. (a)(3), and 56506, subd. (e).)

## FEBRUARY 20, 2025 ERMHS ASSESSMENT PLAN

An IEP team meeting was convened on February 6, 2025, to discuss parental concerns on a variety of subjects. During the team's discussions, Parent mentioned that Student was seeing an outside therapist through his insurance. The IEP team proposed an ERMHS assessment. Parent indicated he would think about it and get back to the team.

On February 19, 2025, Parent notified Sweetwater Union that Student would not attend school that day as Student would participate in a mental wellness day.

On February 20, 2025, Sweetwater Union sent Parent an assessment plan for an ERHMS assessment along with a copy of the IDEA procedural safeguards.

On February 24, 2025, Parent responded to Sweetwater Union's request to assess. Parent reported that based upon information he obtained regarding a lawsuit in Superior Court, he believed that Sweetwater Union was withholding critical information from

parents of special education students at Rancho Del Rey, information which no doubt had the potential to adversely affect the very health and well-being of the school district's most vulnerable students. Parent went on to state that

"special education students, not just my son [Student], are in great need of help for the trauma they have been subjected to at school. Special education students [in general] sadly feel like there is no one on campus they can reach out for help."

Parent cited Bristow and Miyashiro as genuinely good people who cared about students. Parent however, opined that others, such as Student's counselors, showed no problem turning students away who have reached out for help; students were aware that if they went to the office to report suspected abuse perpetrated by a school employee, management staff would notify the accused employee of the allegation made against them. Parent requested such notifications be ended.

Parent reiterated that it was his belief that an ERMHS assessment was necessary to determine the source and extent of Student's mental health. However, it was his belief that Sweetwater Union was attempting to use the ERMHS assessment process to deflect responsibility for Student's condition. Specifically, Parent alleged, last year, Student and other similarly situated students at school, were repeatedly subjected to child abuse and neglect perpetrated by school district employees. Parent asked, "How am I supposed to trust Sweetwater Union's school psychologists when some of them are also the perpetrators?" None of Parent's allegations were clarified or substantiated at hearing.

Parent's generalized statements of widespread trauma within Sweetwater Union did not establish an allegation specific to Student. The evidence did not establish that teachers and staff at Sweetwater Union traumatized or abused Student or that Student suffered trauma or abuse while attending school.

On June 10, 2025, Dr. Campos sent Parent a prior written notice letter which addressed parental requests from the June 6, 2025 IEP team meeting. As part of this communication, Dr. Campos addressed a proposed ERMHS assessment. Dr. Campos noted that during the June 2, 2025 IEP team meeting, Parent reiterated his concerns regarding Student's emotional functioning. Given that Parent rejected the ERMHS assessment plan provided to him on February 20, 2025, Sweetwater Union was again proposing an ERMHS assessment.

#### JUNE 11, 2025 ERMHS ASSESSMENT PLAN

On June 11, 2025, Sweetwater Union sent Parent another ERMHS assessment plan which superseded the February 20, 2025 assessment plan along with a copy of the IDEA procedural safeguards. As the June 11, 2025 assessment plan represented the last ERMHS assessment plan presented to Parent, it is the only assessment plan being analyzed for meeting statutory requirements.

#### REASON FOR ASSESSMENT

The reasons for Student's personal trauma remain elusive. Although Parent repeatedly made vague references to traumatic abuse committed by Sweetwater Union staff, Parent did not allege any traumatic events which demonstrated trauma, abuse or resulted in educational impairment. Sweetwater Union referenced two complaints made by Parent to which Sweetwater Union responded by changing staff to appease Parent.

Police investigations instigated by Parent were determined unfounded. The only collateral information presented to support a mental health concern indicated Student's school attendance dropped to unacceptable absences, which corresponded to his drop in grades. This was supported by Student's attendance records reported by Dr. Olvera. During the first semester of the 2024-2025 school year, Student accumulated 37 absences and 13 early releases from school. During the second semester, January 1, through February 10, 2025, Student was absent 27 times with six early releases.

The independent psychoeducational evaluation report completed by Dr. Olvera, dated March 14, 2025, provided the most coherent information regarding Student's mental health gleaned from Parent's interview.

Parent reported that during the 2023-2024 school year, Student initially interacted positively with special education students he knew from elementary school. In the first semester of seventh grade, Student demonstrated a strong academic performance by maintaining a 4.0 grade point average. However, several incidents involving Student and school staff began to negatively impact Student's behavior. Thereafter, Student became frequently ill and expressed dislike for school. Student began to attend private therapy sessions where he was observed to exhibit signs of depression and anxiety; he ceased engaging in activities he once enjoyed and communicating with friends. During the 2024-2025 school year, Parent was informed by Sweetwater Union that Student was failing two classes and at risk of missing eighth grade graduation. Parent also acknowledged that Student did not regularly attend school.

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Despite these concerns, Parent failed to detail for Dr. Olvera the school incidents that significantly affected Student's ability to

- learn,
- concentrate,
- socialize,
- communicate and
- physically function.

Parent only indicated he contacted Sweetwater Union to outline the situation but had failed to receive a response on their plan to assist Student.

Parent reported that he believed Sweetwater Union should provide mental health services to Student, as the trauma experienced at school was educationally related; the delivery of mental health services should include addressing the alleged abuse Student had been subjected to by school officials. Any further factual information regarding Student's alleged trauma or abuse remains unknown.

The independent psychoeducation evaluation results also indicated mental health concerns. Dr. Olvera administered the Connors Comprehensive Behavior Ratings Scales to assess a wide range of behaviors, emotions and social problems. Parent, Student, teacher Carrillo, and teacher Hurst completed the ratings scales.

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Parent rated Student in the very elevated range for

- emotional distress,
- worrying,
- social problems,
- academic difficulties,
- physical symptoms,
- attention deficit hyperactivity disorder,
- major depressive episodes,
- general anxiety disorder,
- social phobia, and
- autism spectrum disorder.

Parent found Student's functional performance in academics, socially and at home, very elevated while Student's teachers found no areas of concerns.

Of more importance to the IEP team, on self-evaluations, Student rated himself in the very elevated range for depressive symptoms. As explained in Dr. Olvera's social-emotional/behavior assessments, Student exhibited a high probability score of anxiety in performance fears and generalized anxiety disorder.

Decisions regarding areas to be assessed are driven by the suspected needs of the child. If a child's behaviors or physical status is of concern, evaluations addressing these areas must be conducted. (71 Fed. Reg. 46,643 (2006).) Sweetwater Union established there were legitimate and valid reasons for seeking an ERMHS assessment.

## REQUIREMENTS OF ASSESSMENT PLAN

Within 15 days of a student's referral for assessment, the school district must provide a proposed assessment plan to the parents. (Ed. Code, § 56321, subd. (a.) A copy of the notice of parent's rights must be attached to the assessment plan. (*Id.*) The proposed assessment plan must be in a language easily understood by the general public and must be in the parent's native language. It must explain the types of assessments to be conducted and must state that no IEP will result from the assessment without parental consent. (Ed. Code, § 56321, subd. (b).)

In general, California simply requires that assessments be conducted by persons competent to perform the assessment as determined by the local educational agency. (Ed Code, § 56322.) Any psychological assessment of pupils shall be conducted by a credentialed school psychologist who is trained and prepared to assess cultural and ethnic factors appropriate to the pupil being assessed. (Ed. Code, § 56324, subd. (a).)

Sweetwater Union prepared a standard assessment plan utilized through the San Diego South County Special Education Local Plan Area. The assessment plan was written in English and stated that the proposed assessment sought addressed Student's need for educationally related mental health services. The assessment plan contained a prior written notice which provided Parent a description of the proposed evaluation, an explanation of why Sweetwater Union proposed to assess, a description of any other options that were considered, and the reasons those options were rejected, and other factors relevant to the proposed assessment. The assessment plan stated that no IEP based upon assessment would be generated without parental consent.

The assessment plan contained a description of the proposed assessment and stated the assessment would be conducted by qualified staff pursuant to the requirements of title 20 United States Code sections 1414(a)(2)(b) and (c), and Education Code sections 56320 and 56381, subdivision (e). As an ERMHS assessment is a psychological assessment, Sweetwater Union determined that a school psychologist or ERMHS therapist would administer the assessment. The assessment plan informed Parent that the tests conducted pursuant to the assessment could include, but were not limited to,

- classroom observations,
- rating scales,
- interviews,
- records review,
- one-on-one testing or
- some other types or combination of tests.

Following the completion of the assessment, an IEP team meeting would take place at which time Parent would be provided a copy of assessment findings; the results of the assessment could be a recommendation for special education services, maintenance or change of the current special education services.

The assessment plan reported the reason for the ERMHS assessment was based on Parent's concerns regarding Student's social-emotional functioning, reporting that Student experienced anxiety and was receiving private mental health services. Sweetwater Union proposed the ERMHS assessment to determine if Student required

additional IEP services to meet his social-emotional needs. No other options were considered; however, Parent previously rejected the ERMHS assessment plan provided on February 20, 2025.

## PARENT TESTIMONY

At hearing, Parent presented several contentions to explain his refusal to consent to the ERMHS assessment.

Parent believed Sweetwater Union should not have unilateral control of the ERMHS assessment. In Parent's experience, there was a history of inconsistency and contradictions within Sweetwater Union. Sweetwater Union failed to provide the counseling services indicated in Student's IEP. Parent emphasized that in the over 1,000 emails Parent sent to Sweetwater Union, the staff did not appropriately respond to his claims and requests. Parent did not believe the existing counseling program was sufficient considering his allegations of Student's trauma; he wanted more intense counseling for Student.

Parent expressed significant difficulties dealing with Sweetwater Union's school psychologists. Parent did not believe the school psychologists could obtain an accurate reading of data, nor were they capable of providing the depth of counseling required by Student due to the trauma they inflicted on him.

Parent had strong reservations to Sweetwater Union assessing Student regarding trauma suffered at Sweetwater Union. Therefore, he wanted an independent neutral assessor.

Parent identified several events, without details, which he alleged led to Student's trauma. Student felt unsafe with a teacher requiring Sweetwater Union to change Student's class. Student felt unsafe with the school psychologist providing his counseling. Sweetwater Union provided a different school psychologist who Student liked for a short period but then Student decided he would no longer participate with the new counselor. During a meltdown at school, Student called Parent to come pick him up. Parent did so and saw his son dysregulated. Student no longer wanted to participate in counseling and guidance at school.

Parent contended Student did not eat lunch at school and was being victimized by others during lunch; he was called a racial slur by other students. Sweetwater Union made a modification to Student's IEP to allow him to leave class early for lunch and allowed Parent to bring him lunch if he did not accept the approved school lunches. On one occasion, Student became frustrated and cried when a substitute teacher was not familiar with his IEP accommodation and failed to release him early for lunch. Parent came to school to pick him up but was ultimately banned from coming at lunch.

Parent contended Student was traumatized by disappointment in his class scheduling. Student wanted to take a Spanish class and enrolled in the class only to be disenrolled by Sweetwater Union. Student enrolled in band class only to be disenrolled. Ultimately, Sweetwater Union enrolled Student in an art class "with all the other special education students." Parent alleged Student was victimized by another student in the bathroom but provided no further information regarding the event.

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While all these events may have been unfortunate and disappointing to Student, they did not rise to the level of trauma inflicted upon Student at the hands of Sweetwater Union, as alleged by Parent. More information was needed to discover the reasons for Student's fears and school refusal. Sweetwater Union legitimately sought that information in the form of an ERMHS assessment.

Parent repeatedly professed his desire for, and demanded, an ERHMS assessment. Parent, however, contended that Student was too afraid to be assessed again at a school site. Sweetwater Union had been cooperative before regarding the independent psychological evaluation by agreeing the assessment could be conducted in Dr. Olvera's office. Parent believed Sweetwater Union could do the same for an independent ERHMS assessment. Parent also desired to be present during at least part of the assessment process. Whether this request was intended to ensure Student's comfort and cooperation or not, Parent's presence during a mental health assessment would surely impact testing validity.

Sweetwater Union did not agree to an independent ERHMS assessment; however, in late April 2025, Sweetwater Union offered to have a school psychologist who Student did not know conduct the assessment at a school site other than Student's home campus. Parent did not agree.

Although Parent disagreed with the assessment plan, the assessment plan met all statutory requirements. The fact that Parent did not trust Sweetwater Union and chose to obtain private therapy services for Student, did not negate the procedural validity of the proposed assessment plan. Further, the selection of particular testing or evaluation

instruments is left to the discretion of the State and local educational authorities, not the parent. (*Letter to Anonymous* (OSEP September 17, 1993).) This includes selection of the assessors and location for the testing.

## PARENTAL CONSENT AND CONSENT OVERRIDE

A public agency must obtain parental consent prior to conducting any reevaluation of a child with a disability. (34 C.F.R. § 300.300 (c)(i).)

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.) Reassessments are part of the IEP process. Here, Parent continually participated in the IEP process, having himself raised the concerns which indicated a need for an ERMHS assessment.

A school district's failure to conduct appropriate assessments or to assess in all areas of suspected disability may constitute a procedural denial of a free appropriate public education. (*Park v. Anaheim Union High School Dist.* (9th Cir. (2007) 464 F.3d. 1025, 1031-1033.) Therefore, when a parent fails to provide consent to a reassessment deemed necessary by the school district to provide the student with a FAPE, the school district may elect to pursue a consent override pursuant to title 34 Code of Federal Regulations, part 300.300(c)(ii).

The informed parental consent requirement need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent and the child's parent failed to respond. (34 C.F.R. § 300.300(c)(2)(i) & (ii).)

Parent continually reported that Student suffered from mental health issues and requested an ERMHS assessment at the February 6, 2025 IEP team meeting. Sweetwater Union sent Parent an ERMHS assessment plan on February 20, 2025. Parent responded he would not consent to the assessment plan. In late April 2025, Sweetwater Union attempted to offer Parent a compromise to provide a different assessor and different assessment site to ease Student's anxiety. On May 1, 2025, Parent notified Sweetwater Union he did not consent to the ERMHS assessment in a different setting.

Following the June 6, 2025 IEP team meeting, Sweetwater Union sent Parent a prior written notice letter on June 10, 2025, reiterating Parent's concerns about Student's mental health and again proposing an ERMHS assessment. On June 11, 2025, Sweetwater Union sent Parent another ERMHS assessment plan for his consent. Parent did not provide consent.

Sweetwater Union established that the ERMHS assessment is necessary to allow the IEP team to collect current data regarding Student's mental health needs. Sweetwater Union demonstrated a legitimate need for an ERHMS assessment based on Parent's request for an ERHMS assessment, Student's social-emotional/behavior assessments which indicated depression and anxiety, and Student's continuing drop in grades and school attendance.

Sweetwater Union demonstrated it made reasonable attempts to obtain parental consent to the ERMHS assessment plan. The evidence established that Sweetwater Union documented two formal attempts to obtain parental consent to its assessment

plans dated February 20, 2025, and June 11, 2025. Additionally, Sweetwater Union attempted to reach a compromise for assessment in April 2025, which was rejected by Parent. Parent made it clear to both Sweetwater Union and again at hearing that he will not consent to an ERMHS assessment which involved school district employees or was administered at a school district site.

Sweetwater Union established that the June 11, 2025 assessment plan contained all required information to provide Parent with informed consent.

Student provided no credible testimony or evidence to establish that Parent had the right to make demands of Sweetwater Union regarding the terms for conducting an assessment. The law is clearly to the contrary.

Therefore, Sweetwater Union has established the need for consent override, and Sweetwater Union may implement the June 11, 2025 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.

### ISSUE 1:

Sweetwater Union's IEP dated April 24, 2025, as amended on June 6 and 10, 2025, offered Student a FAPE, in the least restrictive environment.

Sweetwater Union prevailed on Issue 1.

## ISSUE 2:

Sweetwater Union is entitled to conduct an ERMHS assessment pursuant to the February 20, 2025, and June 11, 2025, assessment plans without parental consent.

Sweetwater Union prevailed on Issue 2.

## ORDER

1. Sweetwater Union may implement the IEP dated April 24, 2025, as amended on June 6 and 10, 2025, without parental consent.
2. Sweetwater Union may conduct an ERMHS assessment pursuant to the June 11, 2025 assessment plan without parental consent.
3. Sweetwater Union may conduct the assessment at its district offices, school site, or any other location Sweetwater Union deems appropriate to obtain valid assessment results.
4. Sweetwater Union shall notify Parent within 15 business days of this Decision, of the dates, times, and places Sweetwater Union requires Parent to present Student for assessment. Sweetwater Union has the authority to reject or approve any changes to the designated assessment dates proposed by Parent.
5. Parent is ordered to cooperate in making Student available for assessments as requested by Sweetwater Union to comply with state and federal timeline requirements.

6. Parent may not dictate any conditions or veto any school district locations selected by Sweetwater Union for Student's assessments.
7. Parent may not be present during Student's assessment unless deemed appropriate by the assessor.

## 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