

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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CASE NO. 2019100944

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WILLIAM S. HART UNION HIGH SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

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DECISION

DECEMBER 17, 2019

On October 23, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from William S. Hart Union High School District, naming Parent on behalf of Student as respondent. Administrative Law Judge Brian H. Krikorian heard this matter in Santa Clarita, California on November 19, 2019.

Ian Wade, Attorney at Law, represented William S. Hart. Joanna White, the Director of Special Education, attended the hearing on William S. Hart's behalf. Student's mother represented Student.

At the parties' request the Administrative Law Judge, referred to as the ALJ, continued the hearing to December 2, 2019, for written closing briefs, at which time the record was closed, and the matter was submitted.

William S. Hart filed a brief on December 2, 2019. Parent filed a letter on December 5, 2019, which was also considered by the ALJ.

## ISSUE

1. May William S. Hart reassess Student without the consent of Student's parents?

## JURISDICTION

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

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. §

1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, 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).) William S. Hart 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).)

At the time of hearing, Student was 14 years old and in ninth grade. Student resided within the geographic boundaries of William S. Hart at all relevant times. Student was eligible for special education under the category of Autism.

#### ISSUE: MAY WILLIAM S. HART REASSESS STUDENT WITHOUT THE CONSENT OF STUDENT'S PARENTS?

Student was last assessed in March of 2017 for his individualized educational program, referred to as an IEP. William S. Hart argues that Student's behaviors and academic performance over the past several months have raised concerns about Student's progress. William S. Hart would like to initiate a reassessment, but Parents have refused consent.

Mother contends that Student will be assessed in the spring of 2020 as part of the triennial review of Student's IEP, and there is no basis for subjecting Student to earlier assessments. Mother also believes William S. Hart is engaging in early assessments to harass Parents and Student.

To meet the continuing duty to develop and maintain an appropriate educational program, the school district must assess the educational needs of the disabled child. (20 U.S.C. § 1414(a), (b); Ed. Code, §§ 56320, 56321.) “An initial evaluation is the first complete assessment of a child to determine if the child has a disability under the IDEA, and the nature and extent of special education and related services required. Once a child has been fully evaluated. . . any subsequent evaluation of that child would constitute a reevaluation.” (71 Fed. Reg. 46640 (Aug. 14, 2006).) California law refers to a reevaluation as a “reassessment.” (Ed. Code, § 56381.)

School district evaluations of students with disabilities under the IDEA serve two purposes: first, to identify students who need specialized instruction and related services because of an IDEA-eligible disability, and second, to help IEP teams identify the special education and related services the student requires. (34 C.F.R. §§ 300.301 and 300.303.) The first refers to the initial evaluation to determine if the child has a disability under the IDEA, while the latter refers to the follow-up or repeat evaluations that occur throughout the course of the student’s educational career. (See 71 Fed. Reg. 46,640 (Aug. 14, 2006).)

The IDEA provides for reevaluations (referred to as reassessments in California law) 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 if the school district “determines that the educational or related service needs, including improved academic achievement and functional performance, of the pupil warrant a reassessment, or if the pupil’s parents or teacher requests a reassessment.” (20 U.S.C. § 1414(a)(2)(A)(i); 34 C.F.R. § 300.303(a)(1); Ed. Code, § 56381, subd. (a)(1).)

Without updated information from a reevaluation, it may be difficult to develop an educational program that would ensure a student's continued receipt of a FAPE. (*Cloverdale Unified School Dist.* (March 21, 2012) Cal.Off.Admin.Hrngs. Case No. 2012010507, 58 IDELR 295, 112 LRP 17304.) A substantial change in the student's academic performance or disabling condition is an example of conditions that warrant a reevaluation. (*Corona-Norco Unified School Dist.* (SEHO 1995) 22 IDELR 469, 22 LRP 3205.)

When a student is referred for assessment, the school district must provide the student's parent with a written proposed assessment plan, along with notice of the parent's rights. (Ed. Code, § 56321, subd. (a).) The reassessment plan must be in a language easily understood by the general public, be provided in the native language of the parent, explain the types of reassessments to be conducted, and state that no individualized education program will result from the reassessment without the consent of the parent. (Ed. Code, § 56321, subd. (b)(1)-(4).) The parent shall have at least 15 days from the receipt of the proposed reassessment plan to arrive at a decision regarding assessment. (Ed. Code, § 56321, subd. (c)(4).)

Parents who want their child to receive special education services must allow reassessment if conditions warrant it. In *Gregory K. v. Longview School Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315, the court stated that "if the parents want [their child] to receive special education under the Act, they are obliged to permit such testing." (See, e.g., *Patricia P. v. Board of Educ. of Oak Park and River Forest High School Dist. No. 200* (7th Cir. 2000) 203 F.3d 462, 468; see also, *Johnson v. Duneland School Corp.* (7th Cir. 1996) 92 F.3d 554, 557-58.)

If a parent does not consent to a reassessment plan, the school district may conduct the reassessment without parental consent if it shows at a due process hearing that conditions warrant reassessment of the student and that it is lawfully entitled to do so. (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).) Therefore, a school district must establish that (1) the educational or related services needs of the child warrant reassessment of the child, and that (2) the district has complied with all procedural requirements to obtain the parent's informed consent. The school district must also demonstrate that it has taken reasonable measures to obtain informed consent, but the parent has failed to respond. (20 U.S.C. § 1414(c)(3); Ed. Code, § 56381, subd. (f)(1).)

## 2017 ASSESSMENTS

In 2017 Student received assessments in speech and language, occupational therapy, and psycho-education. At that time, Student was attending the Academy for the Advancement of Children with Autism, which was part of the Saugus Union School District. Student was 11 years old.

In the occupational therapy assessment, Student exhibited delays in fine motor precision skills when forming letters. Student also showed delays in both visual motor and perceptual skills to complete written tasks. Student's language and speech assessment concluded that his vocabulary was at a two to three-year-old level. The assessor concluded that Student continued to have great difficulty communicating his wants and needs.

The 2017 psycho-educational assessment found that Student had cognitive deficiencies that were a manifestation of his autism spectrum disorder. Student's social and emotional functioning required attention in several areas. The assessor noted that

Student showed deficits in using communication for social purposes and was unable to change communication to match context or the needs of the listener. Student had difficulty following rules for conversations and storytelling, and did not understand conventions such as idioms, humor, or metaphors.

## REASSESSMENTS REQUESTED BY WILLIAM S. HART

Joanna White was the Director of Special Education at William S. Hart, a position she held since June of 2019. Ms. White was employed by Saugus Union School District from 1997 to 2016 and was also a special education teacher. Ms. White was familiar with Student since the second or third grade. Ms. White observed Student in class 30 to 35 times over the past three years.

On March 26, 2019, Mother sent an email to Ms. White and others revoking all special education services, including the implementation of a specialized circumstance instructional assistance program, known as a SCIA. The SCIA requires adult supervision for classes, transitions, and small group activities. Ms. White observed that Student was often unaware of his surroundings, and lacked awareness of where other students were going. Without the SCIA, there would be safety concerns for Student as he would wander off or not transition to his next activity safely.

In her March 26, 2019 email, as well as subsequent emails, Mother stated she would not allow anyone to assess Student. Ms. White attended an IEP meeting in September 2019 with Mother. In response to the need for reassessment, Ms. White expressed her concerns that Student's goals and objectives did not meet his present levels of performance, and that much of the data the IEP team had was outdated. Student was also absent a good part of the school year, and therefore the team also lacked first-hand observational data.

Jennifer Betty was a credentialed school psychologist at William S. Hart. Ms. Betty believed that reassessments were necessary because Student had missed many days of school and that his behavior in class and transition posed a safety issue to himself and others. Because of Student's absences, the IEP team members were missing observational data which would assist them in meeting Student's needs. Although Ms. Betty had not assessed Student, she noted that Student historically had behavior challenges and was on a behavior plan. Ms. Betty was present at the September 2019 IEP meeting, where IEP team members noted that Student's prior goals appeared too ambitious. Student's current teacher did not know Student well, and Ms. Betty believed a comprehensive reassessment would determine why functions reported and observed were inconsistent with Student's goals.

On August 23, 2019, Ms. Betty prepared a written assessment plan for Student. The plan proposed assessments in the areas of academic achievement, health, intellectual development, language and speech, motor development, social and emotional behavior, and adaptive behavior. The assessments would be conducted by Ms. Betty, the district nurse, a speech pathologist, Student's special education teacher, and an occupational therapist.

Ms. Betty provided the written assessment plan along with a written notice to Parents regarding the procedural safeguards required by the IDEA. Parent's native language was English, and the assessment plan and safeguards were provided in English and in a language easily understood by the general public. Ms. Betty sent the assessment plan and written safeguards to Mother at her last known address. Mother had rejected and returned prior communications from William S. Hart but received the assessment plan and written safeguards sent by Ms. Betty. Mother also acknowledged



receipt of the district's desire to reassess Student in an August 28, 2019 email by indicating her lack of consent "to the Triennial." This was the term she used to describe the reassessments in other communications and in her testimony.

Ms. Betty also handed the written assessment plan and safeguards to Mother directly at a September 2019 IEP meeting. Ms. Betty and other IEP team members discussed with Mother that the district would like to "get the ball rolling" on reassessments before the March 2020 triennial IEP meeting. Mother stated she would take the paperwork provided by Ms. Betty "under consideration."

Gabriel Micciche was a credentialed occupational therapist, has provided services to Student, and has observed him on and off-campus. He testified at hearing. To his knowledge, there had been no formal assessment of Student since Mr. Micciche began providing services. He believed working towards goals based upon observations made in 2017 was no longer a sound practice. Mr. Micciche wanted to provide better occupational therapy services going forward. He believed this could only be accomplished by updated testing, observations, and practical goals as well as new baselines and motor coordination assessments. Some of the tools used in the 2017 assessment were outdated and applied to students of a younger age than Student.

Joanne Sparks was Student's teacher at the time of hearing. She was credentialed in teaching moderate to severe special education students and had over 17 years of such teaching experience. Ms. Sparks felt that Student's prior IEP goals seemed too high for his abilities. At the September 2019 IEP meeting, Ms. Sparks offered to work with Mother to bring Student's goals in line with his present levels of performance. She believed a reassessment would provide an updated picture of Student's abilities, and that waiting to reassess Student until the end of the 2019-2020 school year would be a disservice to him. She also felt that the continued implementation of the SCIA was

necessary since Student had exhibited elopement and similar behaviors that posed a danger to himself and others. She believed that assessments of Student's health, intellectual development, language and speech, motor development, social-emotional behavior, and adaptive behavior would enable William S. Hart to effectively address those behaviors.

Julie Casady was a credentialed speech pathologist employed by William S. Hart. Ms. Casady did not formally assess Student but had informally observed him. Based upon her informal observations and a review of his speech assessment data from 2017, Ms. Casady's opinion was that a current assessment would help her and others tailor Student's speech goals and determine what assistive technology would work best for Student.

Courtney Gaeta was a district behavioral analyst, who provided oversight and consultation for staff. Ms. Gaeta informally observed Student. Ms. Gaeta met weekly with Ms. Betty, the school psychologist. Ms. Gaeta opined that Student would benefit greatly from reassessments in cognitive reasoning and speech and language, and that a reassessment would enable the team to select the appropriate devices to improve Student's progress.

The IEP team held a meeting in September 2019. During that meeting, Mother expressed concern that goals set for Student in prior IEPs were not realistic and were not attainable. Mother felt some of the goals were too ambitious, and team members agreed. Some IEP members felt the goals were inconsistent with Student's current levels of performance. Mother expressed concern that the goals had been set by a prior special education teacher who had limited experience both with Student and teaching special education. The IEP team was also concerned about Student's inconsistent attendance and agitation during class.

The witnesses consistently stated that the lack of current data and Student's absences from school hampered their abilities to assist Student and to have him successfully move forward. The witnesses who testified on behalf of William S. Hart believed that the August 23, 2019 assessment plan would aid the IEP team to help Student progress academically, and would be the only way for William S. Hart to address Student's behavior and academic struggles moving forward.

Mother stated at hearing that Student was low functioning and had undergone substantial testing and assessments. Mother did not agree to reassess Student before the spring of 2020, and was concerned that William S. Hart was only seeking to assess Student early for ulterior motives. Mother believed that because Student received applied behavioral analysis services at home from a private agency, and was assessed independently for both health and cognitive issues, a reassessment was unnecessary. Mother testified that she would not oppose the reassessments if they were undertaken closer to the triennial IEP, which was scheduled for the spring of 2020. Although emails reflected that Mother requested independent educational examinations in March and April of 2019, there was nothing in the record that Mother provided any private or independent assessments to William S. Hart.

William S. Hart demonstrated by a preponderance of the evidence it complied with all statutory requirements to allow William S. Hart to assess without parental consent. William S. Hart had a reasonable basis for suspecting that Student's academic and behavioral challenges could be better identified and addressed by current assessments of Student's present levels of performance. Reassessment was warranted to determine Student's educational or related service needs, including academic achievement and functional performance.

William S. Hart also demonstrated by a preponderance of the evidence that there was a substantial change in Student's behavior and abilities. All of the witnesses for William S. Hart agreed that delaying reassessment for another three to six months would be detrimental to Student.

Mother was sincere in her concerns about the effect of early assessments of Student. However, those concerns did not rise to the level of justifying a delay in reassessing Student to obtain the data necessary to address Student's academic achievement and functional performance. The district witnesses were credible and established that reassessment data was necessary to develop an IEP for Student to make progress in light of his circumstances and progress. Although the statutory language permits reassessments not more frequently than once a year, there are no limits to conducting a reassessment if it is warranted and is more than a year past the last assessment. (see 20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303(b); Ed. Code, § 56381, subd. (a)(2).)

William S. Hart timely provided the proposed assessment plan to Mother in her native language and in language the general public would understand. The assessment plan indicated that the district nurse and school psychologist would conduct the health assessment. The school psychologist and speech and language pathologist would conduct the language and speech assessment. The school psychologist and occupational therapist would conduct the motor development assessment. Student's special education teacher would conduct the academic achievement assessment. The school psychologist would conduct the intellectual development, social and emotional behavior, and adaptive behavior assessments. William S. Hart provided Mother with the

written procedural safeguards in compliance with the IDEA. Mother did not return the assessment plan to William S. Hart within 15 days after receiving it, and verbally and in writing stated she would not agree to a reassessment of Student.

William S. Hart met its burden by demonstrating that it needed to reassess Student in all areas outlined in the August 23, 2019 assessment plan, and it may do so without parental consent.

## CONCLUSIONS AND PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here William S. Hart prevailed on the sole issue. William S. Hart proved that it may reassess Student without the consent of Student's parents.

## ORDER

William S. Hart may assess Student in all areas outlined in the August 23, 2019 assessment plan without parental consent if Parents want Student to have special education services.

## 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.

Brian H. Krikorian  
Administrative Law Judge  
Office of Administrative Hearings