



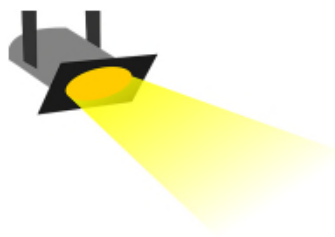
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# Spotlight on Practice



Key Components  
of Reassessments

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# What We'll Focus On. . . .

- ❑ Legal Overview
- ❑ Case Law Illustrations
  - ❑ Need for Reassessment
  - ❑ Sufficiency/Completeness of Reassessment
- ❑ Practical Pointers and Take-Away Training Tips
- ❑ Reassessment Issues During School Closures and Distance Learning



# Legal Overview



# When to Reassess

## ■ Triennial Assessment

- IDEA and California law require that reassessment shall occur at least once every three years, unless parent and district agree in writing that reassessment is unnecessary
- Reassessment may not occur more than once per year, unless parent and district agree otherwise
- Reassessments are referred to as “reevaluations” in IDEA, but terms are identical

(34 C.F.R. § 300.303; Ed. Code, § 56381)



# When to Reassess

- District Determination or Request by Parent or Teacher
  - Reassessment must be conducted if district determines that educational or related services needs of student, including improved academic achievement and functional performance, warrant reassessment, or if student's parents or teacher requests reassessment

(34 C.F.R. § 300.303; Ed. Code, § 56381)



# When to Reassess

- Other Reasons to Reassess Include:
  - Prior to "exit" from special education
    - Except that reassessment is not required before termination of student's eligibility due to graduation with regular high school diploma or due to exceeding age of eligibility
  - Transition from preschool to elementary school
    - To determine if student is still in need of special education and related services
    - Purpose is to ensure that gains made by children between 3 and 5 years old who had received special education and services are not lost by too rapid removal from special education

(34 C.F.R. § 300.303; Ed. Code, § § 56320, 56381, 56381 and 56445)



# Components of Reassessments

- Must comply with procedures required for initial assessments as specified in Education Code section 56302.1 (60-day time period) and in Education Code section 56320, et. seq.
  - Section 56320 requires assessing in all areas of suspected disability, use of variety of tests and other assessment materials, personnel qualifications, nondiscrimination/native language requirements, assessment plans, assessments reports, etc.

(Ed. Code, § 56381, subd. (a)(1))



# Components of Reassessments

- OSEP: While reassessments must meet same requirements as initial assessments, student's reassessment need not be identical to his or her initial assessment in every respect
  - For example, it is appropriate to obtain purely historical data only once – in initial assessment

(Letter to Feehley (OSEP 1986) 211 IDELR 415)





# Components of Reassessments

- As part of reassessment, IEP team and other qualified professionals, as appropriate, must:
  - Review existing assessment data on student, including:
    - Assessments and information provided by parents;
    - Current classroom-based assessments and observations; and
    - Teachers' and related services providers' observations

And . . .



# Components of Reassessments

- On the basis of such review (and input from parents), identify what additional data, if any, is needed to determine:
  - Whether student continues to have a disability;
  - Student's present levels of performance and educational needs;
  - Whether student continues to need special education and related services; and
  - Whether any additions or modifications to special education and related services are needed to enable student to meet annual goals and to participate, as appropriate, in general curriculum

(34 C.F.R. § 300.305; Ed. Code, § 56381, subd. (b).)



# Review of Existing Data

- Review of existing data may be made without holding formal IEP team meeting
- Parent and district may agree that reassessment is unnecessary before review occurs
- Review of existing data requirement does not have reasonable “physical location” component
  - OSEP: IEP team may not exclude record from its review merely because record is not conveniently located

(34 C.F.R. § 300.305(b); Ed. Code, § 56381, subd. (g); Letter to Anonymous (OSEP 2007) 48 IDELR 136; Letter to Mintz (OSEP 2011) 57 IDELR 290)



# Review of Existing Data

- If no additional data is needed to determine whether student continues to be eligible student and to determine his or her educational needs, district must notify parents of:
  - Its determination and reasons for it
  - Parents right to request assessment to determine whether student continues to be eligible and to determine educational needs
- District is not required to conduct assessment unless requested by parents

(34 C.F.R. § 300.305(d); Ed. Code, § 56381, subd. (d))



# Review of Existing Data

- If IEP team and other qualified professionals determine that additional tests or other evaluation materials are needed to provide necessary data, district must propose assessment plan and administer such assessments and other evaluation measures as may be needed to produce such data

(34 C.F.R. § 300.305(c); Ed. Code § 56381(c))



# Consent to Reassessment

- District must make documented “reasonable efforts” to obtain parental consent
- If parents fail to respond, district may proceed with reassessment without parental consent

(34 C.F.R. § 300.300(c); Ed. Code, § 56506, subd. (e); Ed. Code, § 56381, subd. (f))



# Consent to Reassessment

- If parents refuse consent to reassessment plan, district may, but is not required to, pursue reassessment by showing, at due process, that it needs to reassess student and is lawfully entitled to do so
  - District does not violate child find, reassessment obligations, or its obligations to determine eligibility if it declines to pursue assessment through due process

(34 C.F.R. § 300.300(c); Ed. Code, § 56381, subd. (f))



# Case Law Illustrations: Need for Reassessment





# Six Years Between Reassessments Deprives Student of FAPE

- Los Angeles Unified School Dist. (OAH 2017)
  - ❑ Last triennial for 17-year-old with severe autism occurred in 2010, when she was 11 years old and in sixth grade
  - ❑ Parent requested reassessment in 2015
  - ❑ District believed it was not required to conduct triennial assessment because there was no question that Student was eligible for special education
  - ❑ District also believed that OT assessment and speech and language assessment, both conducted in January 2016, were sufficient to identify Student's needs for his triennial IEP in February 2016



# Six Years Between Reassessments Deprives Student of FAPE

- Los Angeles USD (OAH 2017) (cont'd)
  - ALJ: Parent's request triggered assessment process even if District did not consider reassessment was necessary to determine Student's eligibility
  - Failure to conduct Student's "long overdue" triennial assessment prevented IEP team from having complete picture of Student's abilities and needs
  - OT and speech assessment were not substitute for comprehensive psychoeducational assessment
  - Failure to reassess resulted in the loss of educational opportunity and deprived Student of educational benefit

(Student v. Los Angeles Unified School Dist. (OAH 2017) Case No. 2016060728)



# District Does Not Have to Wait Six Months Before Proceeding with Reassessment

- William S. Hart Union School Dist. (OAH 2020)
  - District sought to reassess 14-year-old Student with autism during fall 2019, advising Parent that Student's behaviors and academic performance over past several months raised concerns about his progress
  - Student had been last assessed in March 2017 and would be due for his triennial in six months
    - District believed waiting would be detrimental to Student
  - Parent believed there was no basis for subjecting Student to earlier assessments; claimed District was harassing him
  - District filed for due process, seeking to override Parent's refusal to consent to reassessment



# District Does Not Have to Wait Six Months Before Proceeding with Reassessment

- William S. Hart Union SD (OAH 2020) (cont'd)
  - ALJ determined that District could reassess Student absent Parent's consent
  - Parent's concerns did not justify delay in reassessing Student to obtain data necessary to address his academic achievement and functional performance
  - Witnesses consistently stated that lack of current data and Student's absences from school hampered their ability to address Student's emerging behavior issues and academic struggles

(William S. Hart Union School Dist. v. Student (OAH 2019) Case No. 2019100944)



# Change in Student's Needs After Surgeries Undermines Claim Reassessment Not Needed

- San Marino Unified School Dist. (OAH 2017)
  - In November 2015, seventh-grade Student with autism underwent three brain surgeries to address life-threatening seizures
  - When Student returned to school, District declined to reassess him or conduct FBA before developing new IEP for 2016-17 school year
    - It had conducted Student's triennial assessments shortly before his surgeries
  - Parent filed for due process, contending District was required to update psychoeducational and academic assessments following Student's surgeries



# Change in Student's Needs After Surgeries Undermines Claim Reassessment Not Needed

- San Marino USD (OAH 2017) (cont'd)
  - ALJ: Brain surgeries constituted substantial change in Student's disabling condition that impacted memory, cognition, language, comprehension, motor functioning and physiological function, emotional regulation and behavior
    - District's argument that there was no change in Student's academic skills after surgeries was not persuasive
    - Witnesses noted deterioration in Student's behavior
  - Failure to reassess caused District to offer IEPs that were not based on Student's current circumstances

(Student v. San Marino Unified School Dist. (OAH 2017) Case No. 2016110067)



# Parents Cannot Require District to Reassess Student at Home

- Riverdale Joint Unified School Dist. (OAH 2018)
  - ❑ 13-year-old Student with OHI had not been assessed since 2015 and had not attended school since 2014
  - ❑ Student had no grades on classwork or teacher-supervised assignments since December 2014, nor was there any recent information about his classroom behavior, functional skills or health
  - ❑ Parents agreed to District's proposed triennial but only if Student was reassessed at home and in their presence
    - ❑ Parents claimed Student was too ill to leave house
  - ❑ District filed to assess without Parents' consent



# Parents Cannot Require District to Reassess Student at Home

- Riverdale Joint USD (OAH 2018) (cont'd)
  - ALJ: District could reassess Student
  - Lack of current information about Student warranted reassessment
  - No available medical information supported claim that Student could not attend school or that he needed to be assessed at home
  - “[S]ound professional reasons for the assessors to decide, in their best professional judgments, which parts of the assessments may be conducted in the home and which parts should be conducted elsewhere”

(Riverdale Joint Unified School Dist. v. Student (OAH 2018) Case No. 2018030746)





# **Case Law Illustrations: Sufficiency/Completeness of Reassessment**



# Reliance on Prior Cognitive Assessments, Deficient OT Reassessments Deny FAPE

- Los Alamitos Unified School Dist. (OAH 2019)
  - 16-year-old Student was eligible for special education under primary category of ID and secondary eligibility under category of autism
  - District reassessed Student in process of developing its triennial IEP in 2018
    - Cognitive assessment
    - Two OT assessments
  - After Parents did not consent to District's offer of FAPE, District filed for due process, seeking an order allowing it to implement IEP, notwithstanding the lack of parental consent



# Reliance on Prior Cognitive Assessments, Deficient OT Reassessments Deny FAPE

- Los Alamitos USD (OAH 2019) (cont'd)
  - Student was not appropriately assessed in area of cognition
    - School psychologist relied on “stale scores [from 2005 and 2008] . . . when Student was six years old and younger”
    - Testimony that cognitive levels do not change “was not convincing”
    - District did not explain why other cognitive tests were not employed as part of 2018 reassessment
  - Occupational therapists failed to seek or obtain Parent input during two 2018 OT reassessments
    - Also, second OT assessment report failed to indicate reliance on first assessment and failed to include clear statement as to whether Student required OT services

(Los Alamitos Unified School Dist. v. Student (OAH 2019) Case No. 2018081156)



# Staff Observation, Interviews Are Key to Reassessment and Exiting Decision

- Anaheim Elementary School Dist. (OAH 2018)
  - 7-year-old Student found eligible in 2015 as SLI
  - In 2018, as part of its triennial, District conducted S/L assessment and psychoeducational assessment
  - District concluded that Student was no longer eligible for services and sought order allowing it to exit Student from special education
  - Parents believed that assessments did not accurately reflect Student's current skills and abilities because, in home setting, she was extremely quiet, did not speak, pointed at objects rather than asking for them



# Staff Observation, Interviews Are Key to Reassessment and Exiting Decision

- Anaheim Elementary SD (OAH 2019) (cont'd)
  - District successfully demonstrated that Student was no longer eligible for special education
    - Student's education was not adversely affected by her speech and language abilities
  - ALJ relied heavily on testimony of District staff who had conducted comprehensive observations
    - Teacher had no concerns about Student's speech and language
    - Student was observed using language effectively in interactions with other students and adults in her classroom
  - School psychologist also properly assessed for potential eligibility in other areas

(District v. Anaheim Elementary School Dist. (OAH 2018) Case No. 2018060860)



# Triennial Psychoeducational Assessment Fails to Meet Legal Standards

- Campbell Union High School Dist. (OAH 2018)
  - 16-year-old Student with SLD was reassessed by District after returning from private boarding school in Vermont following eighth-grade year
  - Triennial reassessment found continued SLD eligibility based on severe discrepancy between intellectual ability and academic achievement
  - Parent objected to assessment and asked for IEE
  - District refused to fund IEE and filed for due process



# Triennial Psychoeducational Assessment Fails to Meet Legal Standards

- Campbell Union HSD (OAH 2018) (cont'd)
  - ALJ awarded publicly funded IEE, finding numerous flaws in District's psychoeducational assessment and assessment report
    - Failure to follow publisher's instructions
    - Use of outdated academic information
    - Failure to explain what data or scores supported its finding of special education eligibility
    - Failure to observe Student in general education setting or include classroom observations in report

(Campbell Union High School Dist. v. Student (OAH 2018) Case No. 2018061181)



# Parent Interview Is Not Required for Valid Reassessment

- Alhambra Unified School Dist. (OAH 2017)
  - ❑ District conducted triennial assessments for 15-year-old with autism and ID
  - ❑ Parents disputed District's speech and language assessment and OT assessment
    - ❑ Claimed that speech and language assessment was inappropriate because assessor failed to seek Parent's input via interview
    - ❑ Claimed OT assessor did not administer age-appropriate writing assessment.
  - ❑ Parents requested IEEs in both areas
  - ❑ District filed for due process to defend both assessments





# Parent Interview Is Not Required for Valid Reassessment

- Alhambra USD (OAH 2017) (cont'd)
  - S/L assessment was appropriate
    - No legal requirement for parental interview; law only requires parental input and Mother had significant contact with S/L assessor
    - S/L assessor not required to determine why Student was not progressing on his goals
    - No iPad assessment required as part of S/L
  - OT assessment was appropriate
    - No evidence that specific handwriting assessment existed that was normed for Student's age

(Alhambra Unified School Dist. v. Student and Student v. Alhambra Unified School Dist. (OAH 2017) Case Nos. 2017010013 and 2016090921)



# Practical Pointers and Take-Away Training Tips



## ■ **Watch for Changed Circumstances**

- Change in student's circumstances can accelerate reassessment timeline
- Be alert for apparent shift in student's educational needs or significant discrepancy between IEP's description of student's academic abilities and actual performance

## ■ **No Parental Conditions**

- Provided statutory requirements are satisfied, parents may not put conditions on reassessments
- Parent who insists on placing conditions on assessments may be regarded as having refused consent



## ■ **Observations are Key**

- Observations are essential component of all reassessments, including when seeking to exit a student as in the Anaheim ESD decision
- Good reassessments start with good observations in various settings

## ■ **Assess in All Areas of Suspected Disability**

- But do not rely solely on informal observations to rule out disability if parents and other professionals have expressed concerns
- This can lead to a denial of FAPE due to failure to reassess in all suspected areas of disability using variety of assessment tools



## ■ **Do Not Forget Prior Written Notice**

- If parent requests more than one reassessment within one year and district does not believe reassessment is needed, remember to provide parents with PWN of district's refusal to conduct the reassessment, containing, among other items, explanation of why district is refusing to take such action

## ■ **Document All Efforts to Obtain Consent**

- Before seeking order allowing for reassessment despite lack of parental consent, be sure to document all "reasonable efforts" to obtain consent, including emails, letters, phone calls, visits, etc.



## ■ **Use (and Update) a Tracking System**

- Consider creating alerts several months before triennial assessment deadline so that staff have sufficient time to gather relevant information and prepare necessary documentation

## ■ **Train Staff**

- Relevant staff should be able to reference written guidance explaining law on reassessments

## ■ **Handle Waivers Carefully**

- Always ask parents to provide written statements when they agree to waive reassessment
- But be open to reassessing student after obtaining parental waiver because needs can change quickly



# Reassessments During School Closures/Distance Learning



# Reassessments During School Closures/ Distance Learning

- Extended closures of facilities with no access to students except via distance learning impose extreme difficulties for IEP teams to adhere to timelines for conducting assessments and reassessments
- USDOE: “[A]s a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate”

(Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools While Serving Children with Disabilities (OSERS/OCR 2020) 76 IDELR 104)





# Reassessments During School Closures/ Distance Learning

- Districts have somewhat more flexibility with reassessments than initial assessments, since law allows them to conduct file review based on existing records and data
  - This process is not viable option if additional assessments are needed because of some noted change in circumstances
  - Many, if not most, of these reassessments cannot be conducted via remote options—over the phone or through virtual computer-based observation
  - When this is the case, it is important to document what is being recommended for conducting reassessment and explain why it cannot be administered remotely



# Reassessments During School Closures/ Distance Learning

- When reassessment is due and staff cannot access student except remotely, IEP teams determine what assessments are needed
- Then look to whether there are any needed assessments that can be administered remotely without jeopardizing integrity of results or whether there are meaningful assessments to replace those that cannot be administered remotely
- Review of existing data is also an option in some cases, but must comply with all legal requirements



# Take Aways . . .



- Backlog of overdue reassessments confronts virtually every IEP team
- Thorough familiarity with legal parameters of reassessments can help expedite decision-making
  - When is reassessment needed?
  - What are essential components of legally compliant reassessments?
  - What are rules for obtaining parents' consent?

