

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011010957

ORDER DENYING STUDENT'S
MOTION IN LIMINE

On April 12, 2011, Student filed a motion in limine asking that “evaluation evidence” be excluded by the administrative law judge (ALJ) at the due process hearing, currently set to begin on April 25, 2011. On April 18, 2011, the District submitted an opposition that was not considered due to its untimeliness.¹ On April 19, 2011, the undersigned ALJ ordered the parties to provide additional information in support of, or opposition to the motion in limine, no later than close of business April 21, 2011. Both parties did so in a timely manner.

APPLICABLE LAW

California Education Code section 56504 requires a school district to provide parents with student records within five business days of a request for those records.² Student records are defined as educational records that directly pertain to a student, and are maintained by the school district as part of a student’s file, and do not include personal notes of school personnel. (Ed. Code, § 49061, subd. (b).) These records include “test protocols” generated during assessments and evaluations, so long as that information is personally identifiable to the student. *Newport-Mesa Unified School District v. State of California Department of Education* (C.D.Cal. 2005) 371 F.Supp.2d 1170. Education Code section 49091.10, subdivision (a) permits a parent to inspect instructional materials, which include assessments and teacher’s manuals.

Education Code section 56505, subdivision (e)(7) requires the parties to a due process hearing to provide documents and disclose witnesses to the other party at least five business days before the commencement of the hearing. The ALJ hearing the case has the discretion

¹ At a prehearing conference on April 13, 2011, District was ordered to file its opposition no later than April 15, 2011. District provided no explanation as to why it delayed filing its opposition.

² All Education Code references are to the California Education Code.

to exclude from evidence any documents, or witness testimony not so disclosed. (Ed. Code § 56505.1, subd. (f)).

DISCUSSION

The District filed its request for due process to establish the validity of hearing and vision assessments it conducted of Student because Student has asked the District to fund independent assessments in these areas.

In its motion in limine, Student claims that the District did not provide it with the evaluations, and testing materials pertaining to Student after Student's counsel made requests for the documents on March 14, and April 7, 2011, and therefore the evidence should be excluded. However, the ALJ's authority to exclude evidence is limited to situations where this information was not provided to the parents at least five business days prior to the hearing.

It appears from the supplemental briefing submitted by both attorneys, that the hearing evaluations and testing materials, exclusive of training and operational manuals, were provided to Student with the exchange of evidence that occurred on April 18, 2011, which is five business days prior to the hearing. Evidence submitted by Student with the supplemental briefing indicates that Student could not be administered a standard vision evaluation.³ Accordingly, Student's motion in limine is denied.

Both parties agree that the District has not provided Student with the training and operational manuals for the contested assessments conducted by the District. In his motion in limine, Student argues that he needs this material to conduct an effective cross-examination of the District's witnesses. However, he provides no authority that requires the District to provide him with copies of these documents. Nevertheless, pursuant to Education Code section 49091.10, subdivision (a), and to ensure that all necessary evidence and testimony is available for the ALJ to consider when writing the decision, the District shall make these documents available for inspection no later than the beginning of the due process hearing on April 25, 2011, at the District's administrative offices at 333 South Beaudry Avenue, Los Angeles, California 90017. Student's attorney, and Student's expert witnesses, shall be given a reasonable time to inspect this information, to assist the attorney in cross-examination of the District's witnesses.

ORDER

1. Student's motion in limine is denied without prejudice.

³ This information is contained in individualized education program documents from a team meeting that occurred on December 9, 2010.

2. The District shall make all pertinent training and operational manuals concerning the vision and hearing tests it conducted on Student available for inspection to Student's attorney and experts no later than the beginning of the Due process hearing on April 25, 2011.

Dated: April 22, 2011

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings