

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. DOWNEY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016040358
DOWNEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016020562
DOWNEY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016031078 ORDER DENYING MOTION TO COMPEL PRODUCTION

On May 31, 2016, Student filed a motion to compel production of documents (Motion) with the Office of Administrative Hearings. On June 3, 2016, District filed an opposition. Student did not file in reply.

Student seeks the rating scales and protocols from the Behavior Assessment System for Children and the Conner’s 3rd Edition assessments prepared by Student’s parent and by Ms. Hampton and Ms. Wang at the Phila Speech and Learning Center.

APPLICABLE LAW

Special education law does not provide for prehearing discovery. A party to a due process hearing has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56506, subd. (d)(2) and (3).)

Education Code, section 56504, provides in pertinent part that “[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies

... five business days after the request is made by the parent, either orally or in writing.” Educational records under Section 56504 include assessments and assessment protocols that are personally identifiable to the child, and must be disclosed to the parents. (*Newport-Mesa Unified Sch. Dist. v. State of Calif. Dept. of Educ.* (C.D. Cal. 2005) 371 F.Supp.2d 1170, 1175.) Assessment protocols are school records if kept in Student’s main file or the school psychologist’s working file.

Student’s counsel has stated that District’s psychologist told him on May 27, 2016, by that she had provided the requested protocols to the District. District has provided declarations under penalty of perjury by District’s psychologist and a program administrator testifying that they have provided Student with all protocols within the possession of the school psychologist or District. Both have stated that they are unable to locate the protocols from and the Conner’s 3rd Edition assessments requested by Student. Only the computer generated score report for the Behavior Assessment System for Children has been found, and it has been provided to Student. The Conner’s 3rd Edition assessment is hand-scored, and no records of the requested protocols exist in the records held by school psychologist or District.

The school psychologist affirmed in her declaration that she had administered the tests as part of her 2015 psychoeducational assessment and turned over all the protocols to District on some date prior to July 2015. The requested records connected to the administration of the Conner’s 3rd Edition assessment are presumably lost. The input of Parent and the staff at Phila Language and Learning Center to the Behavior Assessment System for Children exists only as part of the computer-generated score report as input into the scoring program, which has been provided to Student.

District has turned over all material in its possession and under its control. District cannot be compelled to turn over material that does not exist. This Order makes no ruling about the admissibility of or weight to be given to District’s psychoeducational assessment.

ORDER

Student’s Motion to compel production of documents is denied.

IT IS SO ORDERED.

DATE: June 29, 2016

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings