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 FOR SUPPLEMENTAL BRIEFING ON 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.[1] Additional information is required before a ruling may be made on the motion.

DISCUSSION

On January 31, 2011, the District filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH), asking that its vision and hearing assessments, which were reviewed at an individualized education program meeting on December 9, 2010, be found appropriate, and therefore Student is not entitled to an independent educational evaluation in these areas.

On March 14, and April 7, 2011, Student sent letters to the District requesting "copies of all vision and audiology evaluation results, notes, test sheets, test work sheets, instructions and evaluator instruction manuals used or related to the Assessment Plan." Student claimed that he was entitled to these documents as educational records pursuant to Education Code section 56504. In its motion, Student refers to "District's refusal to provide the evaluations, worksheets, evaluation instruction, operator's or user's manual for tests or subtests for the evaluations conducted by the District." However, there is nothing more than this reference to "District's refusal" in its motion, and greater specificity is required, including a list of documents the District provided to Student in response to this request, as well as any documentation of the District's refusal to provide any of this information.

[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. Accordingly, the District's opposition has not been considered.

There is no question that Education Code section 56504, as interpreted by the California Central District Federal Court, requires the District to provide parents with certain evaluation materials that pertain directly to their child. (*Newport-Mesa Unified School District v. State of California Department of Education* (C.D.Cal. 2005) 371 F.Supp.2d 1170.) However, Student is also requesting "evaluation instruction, [and] operator's or user's manual[s]." These materials are not covered by Education Code section 56504. If they are, as Student asserts, material that is subject to parental inspection pursuant to title 20 of the United States Code, section 1232h, then these materials may be "inspected," but copies need not be provided to Student.

ORDER

By close of business on April 21, 2011, Student shall provide information concerning the specific response of the District to its requests of March 7, and April 14, 2011, for information relating to District evaluations of Student. If any records were given to Student by the District in response to these requests, an exact description of the records shall be provided. If the District refused to provide the any of the requested records, or only part of the requested records, copies of any letters or other documentation given to Student by the District shall be provided to OAH. Student may further brief the issue as to what legal authority entitles it to copies of any material withheld by the District. The District shall brief the issue of what legal authority entitles it to withhold the disputed material. Each party shall include sworn declarations supporting any factual assertions included in its briefing. Any such briefs shall be filed by the close of business on April 21, 2011. The ALJ will rule on the motion in limine at the commencement of the due process hearing.

IT IS SO ORDERED.

Dated: April 19, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings