

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012080851

ORDER GRANTING STUDENT'S
MOTION TO COMPEL PRODUCTION
OF EDUCATIONAL RECORDS

On August 28, 2012, District filed a due process hearing request (complaint) naming Student. The complaint seeks an order that Student is not entitled to an independent educational evaluation (IEE) because all assessments of Student performed in January through March 2012 were complete and properly done by qualified assessors.

On September 28, 2012, Student's parents (Parents) filed a letter request for assistance in obtaining educational records from District, which will be treated as a motion to compel production of educational records. On October 3, 2012, Parents filed an amendment to their September 28, 2012 request specifying additional documents not produced. No opposition has been received.

APPLICABLE LAW

Parents may request copies of their child's educational records at any time, and are entitled to receive those copies within five business days of their request. (Ed. Code § 56504.) Educational records under Education Code, 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.) Education Code section 49091.10, subdivision (a), permits a parent to inspect instructional materials, which include assessments and teacher's manuals.

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act (FERPA) to include "records, files, documents, and other materials" containing information directly related to a student, other than directory information, which "are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); Ed.Code, § 49061, subd. (b).) Education records do not include "records of instructional, supervisory, and administrative personnel... which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute." (20 U.S.C. § 1232g(a)(4)(b)(i), see also Ed. Code, § 49061, subd. (b) [which excludes from the definition

of “pupil records” any “informal notes related to a pupil...that remain in the sole possession of the maker and are not revealed to any other person except a substitute.”].)

DISCUSSION

Parents seek an order compelling District to produce educational records pursuant to Parents’ requests on September 7 and 18, 2012. District has produced many of the requested documents, but Parents contend that District has not produced copies of the following seven types of documents related to six identified test instruments administered to Student in 2009 and 2012, that is, (i) protocols/instruments, (ii) instructions (with or without notes recorded on them), (iii) raw data, (iv) scores, (v) assessor’s notes, (vi) score summaries and (vii) unspecified “any other records or information related to” the Photo Articulation Test-3 (PAT-3), CTOPP, MVPT-3 and CTONI-2 administered in 2012, and the Beery VMI and WRAVMA administered in 2009.

As to categories (i), (iii), (iv) and (vi), seeking assessment protocols, raw data, scores and score summaries, these records constitute educational records under Education Code, section 56504, to the extent they are personally identifiable to Student. District must provide copies of these documents to Parents if the documents are personally identifiable to Student, meaning, for example, that Student’s name or student identification number appears on them.

As to category (v), seeking assessor’s notes, the informal notes of an assessor do not constitute educational records if they remain in the sole possession of the assessor and are not revealed to any other person except a substitute. Therefore, District must produce assessor notes only if it has copies of those notes in Student’s files, but otherwise, does not have to produce notes that have been maintained in the assessor’s sole possession and that were not disclosed to anyone other than a substitute assessor.

As to categories (ii) and (vii), seeking test instructions and “any other records and information,” such documents would not fall within Education Code section 56504. Therefore, District is not required to produce such documents. The attachments to Parents’ motion indicate that District has offered to allow Parents to review test instructions and manuals at the District’s offices, and Parents will have an opportunity to include such review in their preparation for the hearing.

ORDER

1. District shall provide to Parents copies of all assessment protocols and/or separate documents providing raw data, scores and score summaries for the Photo Articulation Test-3 (PAT-3), CTOPP, MVPT-3 and CTONI-2 administered to Student by District staff in 2012, and the Beery VMI and WRAVMA administered to Student by District staff in 2009, if the documents are personally identifiable to Student, within five days of the date of this order. District may charge Parents its usual duplication charge for these copies.

2. District shall provide to Parents copies of all assessor notes related to the Photo Articulation Test-3 (PAT-3), CTOPP, MVPT-3 and CTONI-2 administered to Student by District staff in 2012, and the Beery VMI and WRAVMA administered to Student by District staff in 2009, unless the maker of those notes did not revealed them to any other person except a substitute, within five days of the date of this order. District may charge Parents its usual duplication charge for these copies.

3. District shall diligently search for, and use its best efforts to locate, the documents identified at paragraphs 1 and 2 of this Order. District and Parents shall meet and confer no later than October 15, 2012, to discuss any omitted documentation and the reason for their omission, and at Student's election District shall make available witness(es) at the hearing that functioned as the custodian of records and had direct knowledge of District's search for educational records requested by Student.

4. That portion of Parents' motion seeking to compel District to provide copies of test instructions and unspecified "any other records or information" is denied.

Dated: October 05, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings