BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. VAL VERDE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014020761 (Primary)
VAL VERDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014030737 (Secondary) ORDER GRANTING STUDENT'S MOTION TO COMPEL PRODUCTION OF EDUCATIONAL RECORDS

On April 7, 2014, Student filed a motion to compel the Val Verde Unified School District (District) to produce copies of requested assessment protocols without a requirement that Student's parent (Parent) sign the nondisclosure agreement (NDA) proffered by District as a prerequisite to production of those copies. Student contends that the NDA is overly restrictive. The assessment protocols requested are CARE-R, the Southern CA Ordinal Scales of Development (Gross motor section), KALMS (r), BDI-2, ROWPVT-4, EOWPVT-4, REEL-3, PLS-5, the Rossetti Infant-Toddler Language Scale, and language samples.

On April 10, 2014, District filed opposition asserting that Student's motion was moot because District was no longer requiring Parent to enter into an NDA as a prerequisite to production in response to Parent's request.

On April 11, 2014 Student filed a reply asserting that her motion is not moot, as District continues to refuse to provide copies to Parent without a signed NDA.

APPLICABLE LAW

Education Code, section 56504 (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." (Emphasis added.) 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 (*Newport-Mesa*) .)

Copies of assessment protocols include work copyrighted by the assessment test publishers, but provision of protocols to parents under Section 56504 is a fair use of copyrighted material under Title 17 United States Code section 107. (*Newport-Mesa, supra*, 371 F.Supp.2d at p. 1179.) Therefore, school districts may not infringe on this important disclosure protection for parents of special education students from fear of violating federal copyright law.

A school district may minimize the risk of improper use of copies of assessment protocols by parents through reasonable measures, including a nondisclosure or confidentiality agreement. (*Newport-Mesa, supra*, at 371 F.Supp.2d at p. 1179.) Here, however, District has represented that it no longer requires that Parent sign an NDA prior to compliance with Parent's request for copies of assessment protocols, so this order need not determine if the terms of the withdrawn NDA were reasonable.

ORDER

1. Student's motion to compel production of assessment protocols, without the requirement that Parent enter into an NDA, is granted.

2. District shall, within five business days of the date of this order, make clear legible copies of the Student assessment protocols requested by Parent available for pick-up by Parent or a representative of Parent's choice.

3. District may require that Parent or Parent's representative sign for receipt of the copies upon picking them up, but District may not impose any other requirement on receipt of those copies.

4. District shall telephone Student's advocate, Theresa Sester, as soon as the copies are ready for pick up.

DATE: April 11, 2014

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings