BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENTS ON BEHALF OF STUDENT,

and

CONEJO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021020362

OAH CASE NUMBER 2021030817

ORDER DENYING AS MOOT IN PART AND DENYING IN PART STUDENT'S MOTION TO COMPEL PRODUCTION OF EDUCATION RECORDS

JUNE 2, 2021

On May 25, 2021, Student filed with the Office of Administrative Hearings, called OAH, a motion to compel Conejo Valley Unified School District to produce various education records Student believed and presumed existed as of May 25, 2021.

On May 28, 2021, Conejo Valley filed an opposition. During the May 28, 2021 prehearing conference, the parties presented oral argument on Student's motion. On June 1, 2021, Student filed a reply to Conejo Valley's opposition.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), called the IDEA. Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings, but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

The legislative and regulatory framework of these proceedings afford prehearing access to two types of documents: (1) parents have the right to request and receive the pupil's education records within five business days at any time (Ed. Code, § 56504), and (2) the parties are entitled to receive copies of all the documents the other party intends to use at hearing not less than five business days prior to the hearing, as well as "all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing." (Ed. Code, § 56505, subd. (e)(7).)

Education records under the IDEA are defined by the federal Family Educational Rights and Privacy Act, called the 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); 34 C.F.R. § 99.3.) Pupil or 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); Ed. Code, § 49061, subd. (b); 34 C.F.R. § 99.3.)

DISCUSSION

FALL 2020 ASSESSMENTS

Student asserts he requested copies of his education records on January 5, 2021, and that on January 11, 2021, Conejo Valley provided some records, but not all of the assessment protocols and raw data related to the fall 2020 assessments Conejo Valley conducted. In his motion, Student requests all assessment protocols and raw data for those fall 2020 assessments.

There is no question that Education Code section 56504 requires Conejo Valley 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.) Conejo Valley agrees that the assessment test protocols are education records, but claims it already provided them to Student's attorney. Student concedes in his reply that on May 27, 2021, Conejo Valley provided copies of all the assessment protocols and raw data related to the fall 2020 assessments Conejo Valley conducted.

As discussed with the parties during the May 28, 2021 prehearing conference, based on Conejo Valley's attorney's representation that on May 27, 2021, Conejo Valley provided to Student's attorney all assessment protocols and raw data related to Conejo Valley's fall 2020 assessments of Student, Student's motion to compel production of those education records is denied as moot. Student retains all rights to move for further relief if Conejo Valley's production is incomplete.

SPRING 2021 ASSESSMENTS

Additionally, Student moved to compel Conejo Valley to produce assessment reports and the protocols and raw data related to assessments Conejo Valley offered to conduct in the February 19, 2021 assessment plan. On March 26, 2021, Parents consented to assessments of Student's behavior through a functional behavior assessment, his need for recreational therapy, and his central auditory processing.

Student does not contend he requested a copy of his education records on a specific date after January 5, 2021, and that Conejo Valley did not timely produce records relating to the spring 2021 assessments in response thereto. Rather, Student's motion relies on correspondence from one of his attorneys to Conejo Valley on May 24, 2021, the day before Student filed his motion to compel production of documents, in which the attorney requested "copies of the two completed assessments."

On May 12, 2021, Conejo Valley invited Parents to an individualized education program team meeting on either June 1 or 3, 2021, to review the spring 2021 assessment results. Parents told Conejo Valley they were not available on either of those dates and their attorney, who they wanted to attend the meeting, was not available June 3 through 10, 2021, because of the due process hearing in this case. On May 14, 2021, Conejo Valley invited Parents to meet to review the assessment results on May 26 or 27, 2021. Parents informed Conejo Valley they were not available on those dates, and also questioned how the meeting could be held on those dates when the central auditory processing assessment was re-scheduled to be conducted by the Ventura County Office of Education on June 1, 2021, because Parents were unavailable for the originally scheduled appointment date of May 20, 2021. Parents proposed meeting dates of May 28 or June 4. Conejo Valley had a school holiday on Friday, May 28 in advance of the Memorial Day weekend. Several of the Conejo Valley

members of the team were not available on June 4, and neither was the audiologist from the Ventura County Office of Education who was scheduled to conduct the assessment of Student's central auditory processing on June 1. On May 21, 2021, Conejo Valley informed Parents it was not able to hold a meeting before the end of the school year and would propose dates to meet to review the assessment results in August 2021.

Student argues if Conejo Valley offered to meet on May 26th, the assessment reports must already be completed or would be completed before May 26, 2021. However, Parents had postponed the test date for the central auditory processing evaluation from May 20 to June 1, 2021. However, Conejo Valley's attorney represented during the May 28, 2021 prehearing conference that after Parents declined the May 26 or 27 meeting dates, and other dates during the current school year were not agreed to before May 21, 2021, Conejo Valley suspended its other assessments of Student and did not complete them, such that as of May 28, 2021, there were no assessment reports.

Student further argues there must be some data that currently exists related to Conejo Valley's spring 2021 assessments. Student urges OAH to order Conejo Valley to provide copies of the most recent "assessment reports and protocols, specifically as to the 2021 Functional Behavior Assessment."

Student did not prove he requested his education records after January 5, 2021, or more particularly after March 26, 2021, when Parents consented to Conejo Valley assessing Student's behavior through a functional behavior assessment, need for recreational therapy, and central auditory processing. Only a request for Student's education record after March 26, 2021, might encompass assessment protocols or data related to those assessments. On May 24, 2021, only the day before filing the motion to

compel production of education records, Student's attorney requested only assessment reports for the spring 2021 assessments.

To the extent any assessment reports exist five business days before the due process hearing, Education Code section 56505, subdivision (e)(7) requires Conejo Valley to provide them to Student. However, if there are no new assessment reports, there is nothing for Conejo Valley to produce regarding these assessments either to comply with Education Code section 56505, subdivision (e)(7), or in response to Student's attorney's May 24, 2021 request for assessment reports.

It therefore appears in connection with the spring 2021 assessments, Conejo Valley has not failed to produce anything it was required to produce either under Education Code section 56504, because Student did not request a copy of his education record at any time after Parents consented to the spring 2021 assessments, or under Education Code section 56505, subdivision (e)(7), because on May 25, 2021, at the time of Student's motion to compel production of education records, the time for Conejo Valley to produce assessments completed by five business days before the due process hearing had not yet passed. Therefore, Student's motion to compel production of education records related to the spring 2021 assessments is denied.

ORDER

Student's motion to compel production of education records related to the fall 2020 assessments is denied as moot. Student's motion to compel production of education records related to the spring 2021 assessments is denied.

Kara Hatfield

Kara Hatfield
Administrative Law Judge
Office of Administrative Hearings