

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008100500

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO QUASH SUBPOENAS
DUCES TECUM

On October 15, 2008, Student filed a request for due process hearing with the Office of Administrative Hearings (OAH) naming the Garden Grove Unified School District (District) as the respondent. OAH granted numerous continuances over the course of the year following the filing of the complaint. On October 15, 2009, the District's request for a continuance was granted by the undersigned Administrative Law Judge (ALJ) who set the hearing to begin on October 26, 2009.

On October 20, 2009, Student served on District employees the six subpoenas duces tecum which are the subject of this order. Student subpoenaed records from the following people: Tricia Chinn, a teacher on special assignment; resource specialist teacher Sue Dunaway; Principal Bill Gates; Assistant Superintendent for Special Education Gary Lewis; speech therapist Nicole McLaughlin; and District employee Sean Sailors. The subpoenas sought the production of various documents in the possession and/or control of the employees. The District filed a motion to quash all six subpoenas on October 22, 2009.¹ On October 23, 2009, the parties requested, and the ALJ granted, a continuance of the hearing in this matter based upon the illness of Student's counsel. The hearing is currently scheduled to begin on December 7, 2009.

The ALJ held a telephonic hearing regarding the District's motion to quash on October 29, 2009. Maureen Graves, Esq., appeared on behalf of Student. S. Daniel Harbottle, Esq., appeared on behalf of the District. The parties were given an opportunity to argue their respective positions regarding the subpoenas.

¹ At the telephonic hearing held on October 29, 2009, concerning the District's motion to quash the subpoenas, both counsel for the District and counsel for Student referenced an opposition to the District's motion to quash which Student thought had been filed with OAH. However, there is no record in the file that the opposition was received by OAH and OAH staff members have not been able to locate it.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities Education Act (IDEA) has the right to present evidence and compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) The hearing officer in a special education due process proceeding may issue subpoenas or SDTs upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. In ruling on such motions, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure.² Section 1987.1 of that code provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

DISCUSSION

The District raises several arguments in the motion to quash. First, the District argues that the subpoenas are untimely since they were served only four business days before the hearing was scheduled to start on October 26, 2009. However, since the parties stipulated to a continuance, the District now has more than five weeks to respond to the subpoenas. The District's timeliness argument is therefore moot.

With regard to each of the six subpoenas, Student has subpoenaed from each employee all emails containing the name of, or relating to Student, that was generated, sent to or reviewed by the employee, except any in which legal counsel is the sender or sole recipient. The District moves to quash each subpoena as unduly burdensome as the requests relate to emails regarding Student. The District points out that this case covers a three-year period and that it would take an unreasonable amount of time for each employee to review three years' worth of emails, particularly since there is no specific subject matter that Student is seeking. Each email would have to be reviewed to determine if Student was mentioned or referenced, and then emails discussing other students would have to be redacted. Student offered no explanation in his subpoenas for what information he believed was in the emails and was unable to offer any specifics at hearing. The District also moves to quash the subpoena issued to Dr. Gary Lewis to the extent that it requests non-specific training materials or contracts for training at the District level or Lawrence or Alamitos school sites relating to dyslexia, specific learning disabilities or autism, as being unduly burdensome as well. Additionally, the District correctly points out that Student's declarations in support of all six subpoenas fail to establish good cause for the production of the emails.

² Code of Regulations, title 5, section 3089, specifies that the subpoena provisions of the Administrative Procedure Act found in Government Code sections 11450.05 to 11450.30, do not apply in special education due process proceedings.

Discovery in special education cases is limited and is not permitted for the purpose of “fishing expeditions” prior to hearing where specific information is not being sought. The District’s motion to quash each subpoena with regard to the request for emails, as well as the subpoena to Dr. Lewis for training materials and contracts, is therefore granted as Student’s declarations fail to establish good cause for the requests for those documents and the requests are overbroad and overly burdensome.

With regard to the specific items sought from each subpoenaed employee, after discussion with the parties, the ALJ orders the District to produce to counsel for Student the following records prior to the start of the hearing on December 7, 2009:

1. Tricia Chinn: the District is ordered to produce the documents requested in the subpoena, other than emails relating to Student, which are in Ms. Chinn’s possession.
2. Sue Dunaway: the District has already produced all documents subpoenaed other than the emails. The District is not required to produce any further documents with regard to Ms. Dunaway.
3. Bill Gates: the District is ordered to produce any documentation regarding the Kurzweil pilot program at Alamitos Intermediate School to the extent they exist.
4. Dr. Gary Lewis: the District is ordered to produce any documents describing which, if any, extended school year programs were available at the District for summers 2007, 2008, 2009. In all other regards, the District’s motion to quash with regard to Dr. Lewis is granted.
5. Nicole Mclaughlin: the District is ordered to produce all speech therapy notes or memoranda in her possession, other than emails, which relate to Student.
6. Sean Sailors: since the subpoena directed to Ms. Sailors only seeks the production of emails, the District’s motion to quash is granted as to him in its entirety.

It is so ordered.

Dated: November 4, 2009

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings