

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2010020941

v.

RAVENSWOOD CITY SCHOOL
DISTRICT,

RAVENSWOOD CITY SCHOOL
DISTRICT,

OAH CASE NO. 2010040340

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTIONS TO
QUASH SUBPOENAS¹

On May 13, 2010, Student filed a motion to quash a subpoena issued by the District's attorney and served on Student's Mother requiring that she personally appear at the hearing set to begin on May 17, 2010, and that she bring with her Student's medical records. On May 14, 2010, Kathleen Humphrey, Attorney at Law, filed motions to quash and objections to subpoena duces tecums (SDTs) from the District's attorney that were directed to and served on her clients Steven Hansen, M.D., and Palo Alto Medical Foundation (PAMF). These STDs requested Student's medical records and the personal appearance of Dr. Hansen at the hearing.

On May 17, 2010, the hearing began before Administrative Law Judge (ALJ), Rebecca Freie and the motions to quash were addressed. Ms. Humphrey appeared and asked that the SDTs directed to her clients be quashed, and further requested that Dr. Hansen not be required to personally appear. Alexis Cassillas, attorney for Student, also argued in favor of Student's motion to quash, and supported the motions of Dr. Hansen and PAMF. Oral argument was heard from Mr. Whitlock. In addition, Mother briefly testified.

APPLICABLE LAW

¹ This order memorializes a ruling on the record at the commencement of the due process hearing in this consolidated matter that began on May 17, 2010.

Subdivision (c)(2) of section 3082 of title 5 of the California Code of Regulations provides in pertinent part that in special education proceedings in California, “[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party).”² However, section 3082 says nothing about giving notice to the party whose records are being sought by way of a SDT.

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.) The provisions of the Code of Civil Procedure furnish guidance concerning a motion to quash an SDT. Code of Civil Procedure section 1985.3 provides that anyone who seeks to obtain personal records pertaining to a consumer must take certain steps to attempt to notify the consumer that the consumer's personal records are being sought. Code of Civil Procedure section 1985.3, subdivision (b), provides that, not less than 10 days prior to the date called for in the subpoena for production of the records, the “subpoenaing party” shall serve on the consumer whose records are being sought a copy of the SDT, the affidavit supporting the issuance of the subpoena, and a copy of the notice to consumer subdivision (e) requires to be given to the consumer.³ Subdivision (c) requires that, prior to the production of the records, the subpoenaing party shall either: (1) serve upon the witness a proof of service attesting to compliance with subdivision (b); or (2) furnish the witness a written authorization to release the records signed by the consumer or his or her attorney of record.

The consumer notice provision was enacted to implement the guarantee of privacy added to Article I, Section 1 of the California Constitution by initiative in 1972, and in response to a California Supreme Court decision concerning the disclosure of a consumer’s bank records without providing prior notice to the consumer. (See *Lantz v. County of Kern* (1994), 28 Cal.App.4th 1839, 1848; *Foothill Federal Credit Union v. Superior Court* (2007) 155 Cal.App.4th 632, 638.)

Special education law does not specifically address motions to quash subpoenas or SDTs. In ruling on such motions, OAH relies by analogy on the relevant portions of the Code of Civil Procedure. 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

² Neither Ms. Humphrey nor Ms. Casillas argued that the subpoenas be quashed because they were not issued by the “hearing officer.” Accordingly, this issue shall not be addressed.

³ If the person whose records are being sought is a minor, the notice shall be given to his parent or guardian.

On May 17, 2010, Mother testified that she was timely served the notice required by Code of Civil Procedure section 1985.3, and the evidence established that the notice met the requirements of subdivision (e) of section 1985.3. However, the evidence further established that the SDTs served on Dr. Hansen and PAMF did not contain a copy of the proof of service indicating that the appropriate notice had been timely served on Mother. Accordingly, because the requirements of 1985.3 had not been met, i.e., the District failed to serve PAMF and Dr. Hansen with copies of the proofs of service showing that Mother had been served with the notice to consumer, both SDTs were stricken.

In regards to the subpoena compelling Dr. Hansen to personally appear, Ms. Humphrey asserted that compelling the physician's testimony at the hearing, would violate the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-19. Ms. Casillas argued on behalf of Student that the medical information requested was irrelevant, and production of his records and testimony from his doctor would violate his right to privacy. The District contended that the testimony of Dr. Hansen was necessary to support the District's affirmative defense that Student had attention deficit disorder (ADD), and this was why he was having difficulty in school.

The ALJ granted Dr. Hansen's motion to quash the personal subpoena for Dr. Hansen, and granted Student's motion to quash the personal subpoena and SDT for Mother. One of the grounds for quashing the subpoena for Mother was that she could be compelled to testify without a subpoena and would be able to testify about the actions she took to address Student's alleged ADD without producing his medical records. (Gov. Code, § 11513, subd. (b); Gov. Code, § 11450.50.) In addition, the ALJ found that reviewing the Student's medical records, if they were produced by Mother, and listening to the testimony of Dr. Hansen would require an undue consumption of time that was not justified by the limited relevancy of the evidence. (Govt. Code, § 11513, subd. (f).)

ORDER

1. PAMF's motion to quash the subpoena duces tecum is granted.
2. Dr. Hansen's motion to quash the subpoena duces tecum, and the subpoena for his personal appearance is granted.
3. Student's motion to quash the subpoena duces tecum requiring Mother to bring his medical records to the hearing is granted.

Dated: August 31, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings