

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MODESTO CITY SCHOOLS,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010100325

ORDER GRANTING MOTION TO
QUASH SUBPOENA

On October 11, 2010, Modesto City Schools (District) filed a due process hearing request naming Student as the respondent. The matter is currently set for hearing on November 9, 2010.

On October 19, 2010, Student filed a Motion to Quash Subpoena (Motion). OAH has received no response to the Motion.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in 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 hearing may issue subpoenas or subpoenas duces tecum (SDTs) upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit.5, § 3082, subd. (c)(2).) Special education law does not authorize the issuance of subpoenas for discovery purposes, only to compel the attendance of witnesses at the hearing. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).)

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 California Code of Civil Procedure, which provides at Section 1987.1 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

District issued a SDT to third party Genesis Behavior, requesting the production of documents and a personal appearance before the hearing date, on October 25, 2010. Such pre-hearing production of witnesses and documents for discovery purposes is not authorized by special education law. Therefore the Motion is granted, and the SDT is quashed.

ORDER

The Motion to Quash is granted.

Dated: October 21, 2010

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings