

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENLO PARK CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010120283

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION TO QUASH SUBPOENA
DUCES TECUM

On April 13, 2011, Student filed a motion to quash a subpoena duces tecum (SDT) issued by the Menlo Park Elementary School District's (District) attorney and served on Stanbridge Academy (Stanbridge). On April 13, 2011, District filed an opposition to Student's motion to quash.

Student argues that the subpoena for records served on Stanbridge Academy, a private school where Student attends for delivery of documents on April 15, 2011 is unenforceable since prehearing discovery is disallowed. The hearing in this matter is scheduled to begin on April 25, 2011.

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, subs. (e)(2), (3).)

The provisions of the Administrative Procedure Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.) 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)."

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. 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's March 29, 2011 SDT to Stanbridge requests that it produce documents related to all records and documents, including correspondence, billing statements and applications for enrollment, relating to Student. The District served this SDT on Stanbridge. The SDT states that Stanbridge is to produce the documents to the District's counsel by April 15, 2011.

District is entitled to be served, five business days before the hearing, with copies of all the documents the Student intends to use at the hearing, and a list of all witnesses the Student intends to call, with a statement of the general areas of their expected testimony. (Ed. Code, § 56505, subd. (e)(7).) Discovery is not allowed under the IDEA.

However, a party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. Federal law provides for the rights to present evidence and compel the attendance of witnesses in "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).) Both of those subsections relate only to due process hearings, not to any prehearing procedures.

Similarly, California law extends the rights to present evidence and compel the attendance of witnesses only to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) That section of the Education Code only addresses the rights of parties during a due process hearing. Section 56505, subdivision (a) provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Board of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and SDTs.

The District in its opposition does not address the issue of its authority to request the production of documents before the commencement of the due process hearing. While a party may voluntarily produce documents before hearing to avoid the need to testify, possible continuance requests, or the need to recall witness, applicable special education statutes and regulations do not require this early production of documents. The subpoena requirement to produce documents by April 15, 2011 is quashed. Stanbridge shall produce documents as pursuant to District's subpoena on the first day of hearing, which is currently set for April 25, 2011.

ORDER

1. Student's motion to quash the SDT served on Stanbridge is granted in part as documents are not required to be produced on April 15, 2011. However, Stanbridge shall produce the requested documents on April 25, 2011, at the start of the hearing and shall have a witness ready as required by the subpoena unless released by District's counsel.

Dated: April 18, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings