

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010120619

ORDER GRANTING MOTION TO  
QUASH SUBPOENA

On December 20, 2010, Student filed a due process hearing request (complaint). Student alleged, in pertinent part, that the resource specialist program (RSP) services that had been offered in Student's 2010 individualized educational program (IEP) had never been implemented. The matter is set for pre-hearing conference on June 6, 2011, with pre-hearing conference statements disclosing witnesses and exhibits due three days prior thereto. The matter is set for hearing on June 14, 15 and 16, 2011.

On May 3, 2011, Student issued a subpoenas duces tecum (SDT) to District seeking:

Any and all records, whether handwritten, typewritten or electronic, relating to the provision of RSP services to [Student] from September 2010-April 29, 2011 by [District]. Please be advised that electronic records include, but are not limited to, any and all monthly logs and any and all metadata related to said logs (showing when such records were created, who accessed it and when, how and when it was changed, to whom it was forwarded, etc.)

The subpoena set the deadline for the production of documents by May 14, 2011, and requested a declaration of the custodian of records in compliance with Evidence Code, section 1561.

On May 11, 2011, District provided Student's RSP service logs with a cover letter from a District Resource Specialist teacher, which stated however that he was not a custodian of records, and that any questions should be directed to counsel for District.

On May 16, 2011, Student's counsel wrote a "meet and confer" letter to District stating that District had failed to comply with the subpoena, the Code of Civil Procedure and the Evidence Code, specifically by failing to supply a declaration from a custodian of records attesting to the completeness of the production, and by failing to produce metadata. The letter demanded a supplemental production of documents be made by May 19, 2011.

On May 25, 2011, District moved to quash the subpoena, arguing that only Administrative Law Judges, and not counsel, may issue subpoenas in special education matters. District also argued that there is no provision for pre-hearing discovery in special education matters, and that the subpoena seeking metadata was overbroad. OAH has received no opposition to District's motion to quash.

### **APPLICABLE LAW**

The Administrative Procedure Act, found in California Government Code sections 11450.05 to 11450.30, provides that attorneys of record may issue subpoenas in administrative proceedings. However, California Code of Regulations, title 5, section 3089 specifies that the subpoena provisions do not apply in special education due process hearing matters. Instead, California Code of Regulations, title 5, section 3082, subdivision (c)(2) provides that the hearing officer may issue SDTs upon a showing of reasonable necessity by a party.

Under IDEA, parties have no right to conduct pre-hearing discovery because of the shortened hearing schedule. However, Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing. And, at least five business days prior to a due process hearing, each party "must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing." (34 C.F.R. § 300.512(a)(6).)

### **DISCUSSION**

Student has not established reasonable necessity for its subpoena, nor did Student apply to the hearing officer prior to issuing it. Specifically, there has been no showing that Student needs any documents for the due process hearing beyond those, like the service logs that were produced, that are available as educational records under the IDEA. In addition, the request for metadata is overbroad on its face as the information Student seeks is unrelated to whether or not services were actually provided. Moreover, Student has no right to conduct pre-hearing discovery pursuant to the Code of Civil Procedure in this special education due process matter. Accordingly, the subpoena is therefore quashed in its entirety.

**ORDER**

The subpoena is quashed in its entirety.

IT IS SO ORDERED.

Dated: June 01, 2011

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JUNE R LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings