

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020642

ORDER DENYING STUDENT'S
MOTION TO QUASH SUBPOENAS
DUCES TECUM

Parents on behalf of Student (Student) filed a request for due process hearing (complaint) on February 17, 2011, naming the Riverside Unified School District (District) as respondent. The complaint seeks reimbursement to Parents of the cost for an Independent Education Evaluation (IEE) obtained by Parents after their request for an IEE had been denied by the District. Student had filed an earlier case (OAH Case No. 2010120466) alleging that Student was denied a free appropriate public education (FAPE) when the District failed to find him eligible for special education and related services. On March 9, 2011, the District, through its counsel, issued and served three subpoenas duces tecum (SDT) seeking records from two psychologists, Perry D. Passaro, Ph.D. and Catherine M. Stinnett, Ph.D.; and one medical doctor, Debra Suzanne Demos, M.D. Each of the SDTs contained a declaration by District's counsel as to the need and relevance of the information sought as well as a Consumer Notice alerting Student of the SDTs.

On March 24, 2011, Student filed a motion to quash the SDTs on grounds that (1) there is no procedure for discovery in California for due process hearings; (2) the accompanying declarations by the District's attorney failed to demonstrate good cause for the information sought; (3) the material sought was protected and privileged; and (4) the District was misusing the discovery process. On March 30, 2011, the District filed an opposition.

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, the Office of Administrative Hearings relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which 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

In his complaint, Student alleges that the District has failed to comply with the Individuals with Disabilities Education Act (IDEA) and related California laws in failing to fund an IEE per parent’s request. In the related matter, OAH Case No. 2010120466, Student alleges that the District failed to provide him a free appropriate public education when it denied him eligibility for special education and related services under the eligibility category of Traumatic Brain Injury (TBI).

Subpoenas may be issued during the due process proceeding

A hearing officer is permitted to issue subpoenas and SDTs upon a showing of reasonable cause. (5 C.C.R. § 3089, subd. (e)(2), (3).) This is based on the rights of the parties to present evidence and compel the attendance of witnesses. (20 U.S.C. § 1415(h)(2); Ed. Code, § 56505, subds. (e)(2), (3).) Here, the District was attempting to gather the evidence which it would utilize at the hearing.

The District demonstrated good cause for the documents

In the motion, Student alleges: “Respondent has failed to provide an affidavit indicating any good cause for the production of the requested records; the subpoenas are invalid and should be quashed.” The declarations accompanying the SDTs set forth that one of the issues being litigated is the validity of the assessments done by the District and the validity of the IEEs obtained by Parent. The declarations demonstrate that the District is attempting to obtain information from the individuals who assessed and/or treated Student and whose treatment and/or assessment underlie the issues presented in Student’s due process complaints. The District thus has made an appropriate showing of good cause for the production of the documents requested. Student’s allegation is without merit.

The requested records are not protected and privileged

Student contends that the requested records are protected by privilege. Here, Student has put into issue his mental, emotional and medical condition. Evidence Code 1016 provides for an exception to privilege in such instances.

The SDTs do not constitute a misuse of discovery

Student argues that because there are no established discovery procedures in due process cases, the District misused the discovery process. Although Student offers no authority to support his position, he does re-argue that the SDTs are not accompanied by declarations by District counsel demonstrating good cause. As discussed above, that argument was without merit.

ORDER

Student's motion to quash the SDTs to Drs. Passaro, Stinnett, and Demos is DENIED. The SDT return date shall be extended to April 15, 2011. District counsel shall serve all parties to whom subpoenas were issued with a copy of this order.

Dated: April 07, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings