

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2011060001
v.	
SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	
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SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011050857
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING REQUEST FOR SUBPOENA

On May 19, 2011, South Pasadena Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011050857 naming Parent on behalf of Student (Student) as the respondent. On May 27, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060001 naming District. On June 9, 2011, the cases were consolidated. On June 13, 2011, the Office of Administrative Hearings granted Student's Motion to Amend her complaint, which alleged, in pertinent part, that District failed to complete Student's triennial IEP.

On July 18, 2011, Student filed a document entitled, in pertinent part "Motion to Subpoena the Complete Handwritten Triennial IEP, Triennial Assessment Report, Triennial Assessment Plan." On July 21, 2011, District filed an Opposition.

The motion was contained within a document whose full title was "Response to [District's] Motion to Quash Subpoena and Subpoena Duces Tecum and Motion to Subpoena the Complete Handwritten Triennial IEP, Triennial Assessment Report, Triennial Assessment Plan." The filing was part of a series of prior letters, a prior subpoena, a motion to quash, and an opposition. In these filings, District contended that on or around April 26, 2011, it provided Student's educational records to parents. Parents contended that documents were missing or were never received. By OAH Order dated July 19, 2011, OAH directed: (1) Parent to specify with particularity which documents Parents contend were missing or never received in District's April 26, 2011 document production; and (2) District

to provide any further responsive documents that may have been generated after April 26, 2011.

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 subpoenas duces tecum 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

The Motion is granted. Student reasonably needs the requested documents for the due process hearing. While District contends that it has already provided Student’s educational records, its supporting declarations do not specifically attest that the particular documents at issue, i.e. the complete handwritten Triennial IEP, Triennial Assessment Report, and the Triennial Assessment Plan, were part of what it provided. Student’s Motion clearly contends that these documents were never provided and/or received. OAH’s order of July 19, 2011, directs Parents to specify with particularity any documents Parents contend were missing from what they may have received from District. Parent’s Motion complies with that Order. Therefore the Motion is granted.

Should District contend that these documents do not exist, or should it have information that these specific documents were included in its production of educational records, it may move for reconsideration of this Order; any such motion shall be supported by sworn declaration attesting either to the prior production or the nonexistence of the complete handwritten Triennial IEP, Triennial Assessment Report, and the Triennial Assessment Plan.

ORDER

OAH will provide a signed subpoena directing District to provide to Parents, at least five business days prior to the due process hearing, the following documents: (1) the complete handwritten Triennial IEP; (2) the Triennial Assessment Report; and (3) the Triennial Assessment Plan. Student shall serve the subpoena on District.

Dated: July 25, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings