

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011061010

ORDER GRANTING MOTION TO
QUASH SUBPOENA DUCES TECUM

On June 21, 2011, Parent, on behalf of Student, filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2011061010, naming the Lincoln Unified School District (District). OAH scheduled an expedited and non-expedited hearing. The expedited hearing was scheduled to start on July 19, 2011. The expedited hearing was vacated when Student withdrew his complaint for the expedited hearing. The non-expedited hearing remains on the calendar for August 16, 2011.

On July 12, 2011, Parent personally served a subpoena duces tecum (SDT) upon District for documents and recordings related to Student's panel hearing sessions and individualized education program (IEP) team meetings to be produced by July 15, 2011. On July 15, 2011, District filed a motion to quash the SDT. District asserts that the SDT was not served within the statutory time frame, attempts to compel production of documents (discovery) prior to hearing, seek items that are not relevant to the hearing, or have already been provided, or do not exist. OAH did not receive a response from Parent.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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 provisions of the Administrative Procedures Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.) However, the hearing officer in a special education due process proceeding may issue subpoenas or SDTs upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. 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. By analogy, California

Code of Civil Procedure section 1985.3 requires subpoenas be served at least 10 days prior to the date the witness must produce the documents.

DISCUSSION

A subpoena or SDT on a witness requiring the production of documents must give that witness a reasonable length of time to locate and produce documents. Student served the SDT on District on July 12, 2011, requesting production of documents by July 15, 2011, essentially giving District three days to comply. In addition, documents produced by a SDT are produced by witnesses at hearing. In this case, the SDT required District to produce documents two business days prior to the expedited hearing. In either case, there was insufficient time for District to reasonably respond to the SDT. Therefore, District's motion to quash the Student's SDT must be granted on that basis.

Accordingly, District's motion to quash the SDT is granted. Since the motion to quash the SDT is granted on the basis of timeliness, the other allegations of compelling discovery, lack of relevance, that the documents have already been provided, or do not exist, were not considered.

ORDER

1. District's motion to quash the subpoena duces tecum for records is granted.

Dated: July 20, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings