BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2011070549
PARENT ON BEHALF OF STUDENT, v. UPLAND UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011060368 ORDER GRANTING MOTION TO QUASH SUBPOENA DUCES TECUM ISSUED TO FATHER

On June 8, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060368, naming District as the respondent, alleging that District failed in its Child Find obligations to identify and address Student's need for special education and related services, and that District denied Student a free appropriate public education (FAPE) during the 2010-2011 school year.

On July 11, 2011, District filed a Request for Due Process Hearing in OAH case number 201070549, naming Student as the respondent, seeking an order permitting District to assess Student without parental consent.

On July 13, 2011, District issued a subpoena duces tecum (SDT) to Father, seeking the production of numerous categories of documents. The SDT set the deadline for the production of documents by August 3, 2011, and requested a declaration of the custodian of records in compliance with Evidence Code, section 1561.

On July 18, 2011, the cases were consolidated.

On July 26, 2011, Student moved to quash the subpoena, arguing that only Administrative Law Judges (ALJs), and not counsel, may issue subpoenas in special education matters. Student also argued that information will be exchanged prior to the due process hearing, and that the subpoena was overbroad.

On July 29, 201, District opposed the motion to quash.

As explained below, the motion to quash is granted, however this is without prejudice to District's right to apply to the hearing ALJ for its SDT.

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

District argues that not only the ALJ, but also attorneys, may issue SDTs in special education due process matters. District argues that the Code of Regulations, while providing that the hearing officer may issue SDTs upon a showing of reasonable necessity, is "silent" on the issue of attorney-issuance. District further contends that the Code of Civil Procedure applies by analogy to allow attorney-issuance of subpoenas in special education due process matters.

District's arguments are unpersuasive. The Code of Regulations specifies that the provisions of the Administrative Procedure Act that allow attorneys to issue subpoenas do not apply in special education due process matters. (Cal. Code Regs., tit. 5, § 3089.) The Code of Regulations, further, specifically provides an alternate method of obtaining needed documents by applying to the hearing officer upon a showing of reasonable necessity. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Accordingly, the subpoena is quashed in its entirety. This order is without prejudice to District's right to apply to the hearing ALJ for its SDT.

ORDER

The subpoena is quashed in its entirety. This order is without prejudice to District's right to apply to the hearing ALJ for its SDT.

Dated: August 01, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings