

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT, v. FOUNTAIN VALLEY SCHOOL DISTRICT.	OAH CASE NO. 201110163
FOUNTAIN VALLEY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011110391 ORDER DENYING STUDENT’S MOTION TO QUASH SUBPOENA DUCES TECUM

On November 1, 2011, Parent on behalf of Student (Student) filed a Request for Due Process Hearing naming the Fountain Valley School District (District) as the respondent. On December 9, 2011, the District filed its own Request for Due Process. On December 14, 2011, the cases were consolidated. On December 19, 2011, Student filed a First Amended Request for Due Process.

On February 28, 2012, the District, through counsel, personally served a subpoena duces tecum (SDT) upon Jennifer Guze Campbell, legal counsel for Student, requesting production of “educational, enrollment, and payment records” pertaining to Student’s placement at Sts. Simon and Jude, the private school where Student is currently enrolled. On March 1, 2012, the Student filed a motion to quash the SDT. On March 5, 2012, the District filed its opposition to motion to quash the SDT.

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, subds. (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

The Student's objection to the SDT is based upon the sole argument that an attorney of record does not have authority to issue a SDT. However, the Office of Administrative Hearings has generally concluded that this court may quash, modify, or direct compliance with SDTs.

In this case, the Student has asserted a claim for reimbursement for placement at Sts. Simon and Jude, the Student's private school placement. The District asserts that it is necessary for the District's defense against Student's claims and requested remedies for this matter to obtain educational, enrollment and payment records from the Student's private school placement. To obtain reimbursement for an educational placement, as requested by the Student, he must show both that the District's offer of a free appropriate public education was not sufficient to meet Student's educational needs and that Student's private placement was appropriate (20 U.S.C. § 1415(a)(10); 34 C.F.R. § 300.148(c)(2006).) The District is entitled to defend against these claims.

Therefore, the District has established that it is reasonably necessary to its defense against Student's claims and requested relief in this matter to obtain records from the Student's present, private school placement. Given that the District has no manner in which to obtain records from the private school placement, coupled with the reasonable necessity of the documents sought, the Student's motion to quash is hereby denied.

ORDER

Student's motion to quash the SDT to Sts. Simon and Jude is denied. The Student shall produce educational, enrollment and payment records pertaining to Student's private school placement by March 12, 2012.

Dated: March 09, 2012

/s/

PAUL H KAMOROFF
Administrative Law Judge
Office of Administrative Hearings