

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2011111030

v.

BONSALL UNION SCHOOL DISTRICT,

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BONSALL UNION SCHOOL DISTRICT,

OAH CASE NO. 2011100419

v.

PARENTS ON BEHALF OF STUDENT.

ORDER DENYING DISTRICT'S  
MOTION FOR SUBPOENA DUCES  
TECUM

On October 12, 2011, the Bonsall Union School District (District) filed a due process hearing request naming Student. Student filed a due process hearing request on November 28, 2011, naming the District. The Office of Administrative Hearings (OAH) granted Student's motion to consolidate the two cases on November 30, 2011. The parties have requested and OAH has granted several continuances in the case. The due process hearing is presently scheduled to begin on May 29, 2012.

On April 20, 2012, the District filed a Motion for Subpoena Duces Tecum (SDT) with OAH. The District requests OAH to issue a personal subpoena and subpoena duces tecum to Dr. Mitchel Perlman, ordering him to appear at hearing on June 5, 2012, and to bring records identified in the proposed subpoena with him. Student has not filed an opposition or other response to the District's motion.

California Code of Regulations, title 5, section 3082, subdivision (c)(2), provides that the hearing officer may issue personal subpoenas and subpoenas for the production of documents upon a showing of reasonable necessity by a party. However, special education law does not specifically address whether a personal subpoena and/or an SDT may be issued by an attorney, or what requirements apply. Given that special education law is silent on this topic, OAH analogizes to the relevant portions of the California Code of Civil Procedure. Code of Civil Procedure section 1985, subdivision (c), provides that an attorney of record in an action may sign and issue an SDT to require production of the matters or things described

in the subpoena. OAH permits an attorney of record in a special education matter to sign and issue personal subpoenas and SDT's consistent with this provision.

In this case, the District is represented by attorneys licensed to practice law in California. Therefore, the District's attorneys are authorized to issue personal subpoenas and subpoenas duces tecum in due process proceedings before OAH. The District's Motion for Subpoena Duces Tecum is therefore denied as unnecessary. Counsel for the District may sign and issue the subpoenas to Dr. Perlman.

ORDER

The District's Motion for Subpoena Duces Tecum is denied.

Dated: May 3, 2012

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings