

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030889

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
QUASHING SUBPOENA DUCES
TECUM

On March 23, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Stockton Unified School District (District). On April 9, 2012, the Office of Administrative Hearings (OAH) granted the District's request for an Order of Insufficiency as to all issues. On April 17, 2012, Student filed an Amended Complaint containing five issues. The matter is presently set for hearing for May 23, 2012.

On May 7, 2012, Attorney for the District served a Subpoena Duces Tecum on the San Joaquin County Human Services Agency (SJCHSA) and San Joaquin County Mental Health (SJCMH). On May 9, 2012, Student filed a motion to quash because the District sought confidential child protective services (CPS) records and health records. On May 11, 2012, the District filed an opposition.

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, § 56506, subds. (e)(3), (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child's educational records (Ed. Code § 56504.) Additionally, the parties are entitled to receive copies of all the documents the opposing party intends to use at hearing, no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

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 (SDT) (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 SDT's. In ruling on such motions, the OAH 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 District seeks records from SJCHSA and SJCMH to establish that the mental health and behavioral issues alleged in Student's complaint are the result of problems in Student's home, and not educationally related. Student contends that these records are confidential and should not be disclosed to the District. The District contends that any confidential concerns can be addressed by having the records inspected by the assigned Administrative Law Judge (ALJ), who can decide which records are relevant and can be disclosed to the District.

Regarding the District's SDT for CPS records from SJCHSA, these records are protected from disclosure by Welfare and Institutions Code, section 827, and Penal Code, section 11167.5, as confidential juvenile court records. If the District wishes to obtain a copy of CPS records, the District will need to file a petition with the Superior Court of San Joaquin County. Accordingly, Student's motion to quash the SDT served on SJCHSA is granted.

Regarding the District's SDT for mental health records from SJCMH, the documents sought may include confidential health care records protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). However, the District, in its opposition papers, correctly points out that there are exceptions to these federal for production of records pursuant to an SDT when litigation is pending or when government benefits are being sought. (45 C.F.R. § 164.512(e)(1)(ii).) The requested documents are relevant to Student's central claim whether the District met Student's unique mental health and behavioral needs and whether Student was eligible for special education services under the category of emotional disturbance. Therefore, Student's motion to quash the SDT served on SJCMH is denied. However, those records shall be sealed and the ALJ at hearing shall conduct an in-camera review as to relevancy of the documents and issue any needed protective orders.

ORDER

1. Student's motion to quash the SDT served upon the SJCHSA is granted.

2. Student's motion to quash the SDT served upon the SJCMH is denied. The documents shall be produced in a sealed envelope and delivered to the ALJ at the commencement of the hearing to conduct an in-camera review.

Dated: May 11, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings