

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOWELL JOINT SCHOOL DISTRICT,	OAH Case No. 2015100100
LOWELL JOINT SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015100387 ORDER GRANTING, IN PART, DISTRICT’S MOTION TO QUASH STUDENT’S SUBPOENAS DUCES TECUM

Student served subpoenas duces tecum (SDT’s) upon District on November 13, 2015 and on March 22, 2016. On March 23, 2016, District filed a motion to quash both SDT’s. The motion was argued at the prehearing conference in this matter on March 25, 2016. For the reasons set forth on the record and as set forth below, District’s motion is granted in part and denied in part.

APPLICABLE LAW

The IDEA provides parties with the right to present evidence and compel the attendance of witnesses at “a hearing conducted pursuant to subsection (f) or (k)” of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)).

The standard for issuance of an SDT in a special education due process proceeding is “reasonable necessity” (Cal. Code of Regs., tit. 5, § 3082, subd. (c)(2)), which requires a specific showing that the requested documents are reasonably necessary for the requesting party to present a case at hearing. This standard is stricter than the general APA standard of “good cause” for issuance of SDT’s, adopted from Code of Civil Procedure. (Code of Civ. Proc., § 1985, subd. (b) [adopted into the APA at Gov. Code § 11450.20, subd. (a)].)

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

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 issue in Student's due process hearing request is whether District denied Student a free appropriate public education by failing to assess Student for central auditory processing disorder. The issues in District's complaint are whether District appropriately assessed Student in the area of auditory processing, such that District is not required to provide, at public expense, an independent educational evaluation for central auditory processing disorder; and whether District offer Student a FAPE in IEP's dated April 22, 2015, May 18, 2015, and October 8, 2015.

The November 13, 2015, SDT sought two categories of documents. The first category was "any and all emails and correspondence from or to any District personnel during and/or referencing the 2014-2015 and 2015-2016 school years regarding Parent's IEE request and special education eligibility." The second category was "any and all materials, documents, notes, manuals, impressions, and Student responses concerning the following assessments administered in April and May 2015: Test of Auditory Processing Skills, Clinical Evaluation of Language Fundamentals and Social Language Development Test." The March 22, 2016, SDT sought one category of documents: "The examiners manual and any materials used by the examiner to administer and score the Woodcock Johnson-IV used to assess Student in April and/or May 2015."

Both SDT's were supported by Student's counsel's declaration under penalty of perjury that the "books, papers, documents and things stated were material to the proper presentation of Student's case," i.e. without the requested documents Parents were "unable to participate meaningfully in the development of an appropriate educational program for Student."

As to both the November 13, 2015 and March 22, 2015, SDT's, Student's counsel's declaration fails to establish the relevance of the requested documents, because the only issue in Student's case and the first issue in District's case concerns whether District appropriately assessed Student for an auditory processing disorder. Student did not allege District denied Student a FAPE by failing to allow Parents the opportunity to participate in educational decisions.

As to the first category of documents in the November 13, 2015 SDT and the entire SDT dated March 22, 2016, Student failed to make a threshold showing that the documents requested in the SDT's are reasonably necessary for a hearing on the issues presented. District's motion to quash is therefore granted as to the first category of documents in the November 13, 2015 SDT and the SDT dated March 22, 2016. For the reasons stated on the record during the prehearing conference, the only category of documents in either SDT that

might be relevant to whether District appropriately assessed Student for auditory processing disorder is within the second category of documents sought by the November 13, 2015 SDT: “Any and all materials, documents, notes, manuals, impressions, and Student responses...” concerning auditory processing assessments administered in April and May 2015.

District’s motion to quash the second category of documents in the November 13, 2015 SDT, specifically, “[a]ny and all materials, documents, notes, reports, manuals, impressions, and Student responses for the following assessments conducted on Student to assess in the area of auditory processing during April and May 2015: Test of Auditory Processing Skills, Clinical Evaluation of Language Fundamentals and Social Language Development Test” will be determined by the ALJ at the hearing. District shall have documents responsive to the SDT available at the time of hearing but is not required to provide copies of the documents to Student pending a ruling by the ALJ.

IT IS SO ORDERED

DATE: March 28, 2016

DocuSigned by:

Marian H. Tully

MARIAN H. TULLY

Administrative Law Judge

Office of Administrative Hearings