

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENIFEE UNION SCHOOL DISTRICT
AND RIVERSIDE COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2010030663

ORDER DENYING MOTION TO
QUASH SUBPOENAS DUCES TECUM

On or about April 22, 2010, the District and the Riverside County Office of Education (RCOE), acting through their attorney, issued subpoenas duces tecum (SDTs) to Dr. Richard Kotomori, the Oak Grove Institute, the Tipton Academy, the Canyon Ridge Hospital, and Dr. William Murdoch.

On May 12, 2010, Student moved to quash the SDTs. On May 17, 2010, the District and RCOE filed an opposition to the motion. On May 21, 2010, all dates in the matter were vacated and reset for September 2010.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities in Education Act 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, subs. (e)(2), (3).) The hearing officer in a special education due process hearing may issue subpoenas or subpoenas duces tecum (SDTs) upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit.5, § 3082, subd. (c)(2).) However, special education law does not specifically address motions to quash subpoenas or SDTs. In ruling on such motions, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure.

DISCUSSION

The sole ground for Student's motion to quash the five SDTs herein is that only an ALJ can issue an SDT, and then only upon a proper showing of reasonable necessity.

At present OAH decisions authorize attorneys to issue SDTs.¹ (See, e.g., *Student v. Del Mar Union School Dist.* (Aug. 28, 2009) OAH Case No. 2009060209 (Order Denying

¹ The procedures for issuing STDs are under review by OAH.

Motion to Quash Subpoenas Duces Tecum); *Student v. Jefferson Union High School Dist.* (June 25, 2009) OAH Case No. 2009030672 (Order Denying Student's Motion to Quash Subpoenas for Business Records); *Student v. Tehachapi Unified School Dist.* (May 4, 2006) OAH Case No. 2005120939 (Order Regarding Petitioner's Motion for Protective Order.)

Student's argument is thus incorrect, and the SDTs will not be quashed.

ORDER

Student's motion to quash the SDTs served on Dr. Richard Kotomori, the Oak Grove Institute, the Tipton Academy, the Canyon Ridge Hospital, and Dr. William Murdoch is denied.

Dated: August 26, 2010

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings