

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2010080006

RIPON UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010090779

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTIONS TO QUASH SUBPOENA
DUCES TECUMS

On October 19, 2010, Student filed a motion to quash a subpoena duces tecum (SDT) issued by the Ripon Unified School District's (District) attorney and served on Student's mother. On October 22, 2010, the District filed an opposition to Student's motion to quash, and Student filed a reply brief on October 25, 2010.

On October 25, 2010, Student filed a motion to quash a SDT issued by the District's attorney and served on Genesis Behavior Center (Genesis), a nonpublic agency that had provided behavior services to Student. The District did not file a response. This matter is presently set for hearing to commence on November 9, 2010.

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, subs. (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, OAH relies by analogy on the relevant portions of the California Code of Civil Procedure. Section 1987.1 of that code 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

Subpoena Issued to Student's Mother

The District's October 13, 2010 SDT to Mother requests that she produce documents related to communication between her and Genesis, the District and nonpublic schools and agencies. The District served this SDT on Student's counsel. The SDT states that Mother is to produce the documents to the District's counsel by October 25, 2010. Because Student's counsel also represents Mother, Student's counsel has standing to raise the issue of when Mother is to produce the requested documents.

Parents may, before a hearing, obtain pupil records under Education Code section 56504 and related statutes, and are entitled to receive, five business days before the hearing, copies of all the documents the district intends to use at the hearing, and a list of all witnesses the district intends to call, with a statement of the general areas of their expected testimony. (Ed. Code, § 56505, subd. (e)(7).)

However, a party does not have the power to use a subpoena to compel the production of documents before hearing. The applicable statutes and regulation securing the rights to present evidence and compel the attendance of witnesses all relate to the hearing itself. Federal law provides for the rights to present evidence and compel the attendance of witnesses in "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).) Both of those subsections relate only to due process hearings, not to any prehearing procedures.

Similarly, California law extends the rights to present evidence and compel the attendance of witnesses only to "[a] party to a hearing held pursuant to this section ..." (Ed. Code, § 56505, subd. (e).) That section of the Education Code only addresses the rights of parties during a due process hearing. Section 56505, subdivision (a) provides that "[t]he state hearing shall be conducted in accordance with regulations adopted by the board," and under that authority the Board of Education promulgated section 3082, subdivision (c)(2), of title 5 of the California Code of Regulations, which authorizes the issuance of subpoenas and SDTs.

The District in its opposition does not address the issue of its authority to request the production of documents before the commencement of the due process hearing. While a party may voluntarily produce documents before hearing to avoid the need to testify, possible continuance requests, or the need to recall witness, applicable special education statutes and regulations do not require this early production of documents.

Mother also objects to the SDT for being overly burdensome and that the requested documents are in the possession of Genesis and the District, and correspondence between Mother and nonpublic schools or agencies is not relevant to this action. The fact that Genesis or the District may be in possession of the requested documents does not excuse Mother from complying with the SDT as the possibility exists that Genesis and the District may not have the complete records. Regarding the relevancy of correspondence between Mother and nonpublic school and agencies, these documents are relevant as to availability of services. Accordingly, Student's motion to quash the SDT issued to Mother is granted in part as Mother is to produce the requested documents at the commencement of the hearing on November 9, 2010.

Subpoena Issued to Genesis

The District's October 21, 2010 SDT to Genesis requests documents related to Student, including communication between Genesis and Mother, District, and Student's legal counsel. The District served this SDT on Genesis and Student's counsel.¹ The SDT states that Genesis is to produce the documents to the District's counsel by October 29, 2010.

Student objects to the SDT because the District is seeking prehearing discovery. Student does not raise any other objection to the District's SDT to Genesis. Student does not have standing to raise this issue as the decision whether to object to the SDT or to produce the requested documents belongs to Genesis. Unlike the patient-therapist privilege that would give Student standing, Student has not raised any legal objection to the Genesis SDT that gives him standing to object. Therefore, Student's motion to quash the SDT served on Genesis is denied.

ORDER

1. Student's motion to quash the SDT served on Mother is granted in part as Mother shall produce the requested documents on November 9, 2010, at the start of the hearing.
2. Student's motion to quash the SDT served on Genesis is denied.

IT IS SO ORDERED.

Dated: October 29, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Genesis did not file a motion to quash, or any documents in support or in opposition to Student's motion.