

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT, ET AL.

OAH CASE NO. 2010110717

ORDER DENYING MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS

In December 2010, Student's parents on behalf of Student (Student) filed an amended due process hearing request naming Dry Creek Joint Elementary School District (District), Placer County Office of Education, and Placer County Children's System of Care. The case is set for hearing before the Office of Administrative Hearings (OAH) on February 2, 2011.

On October 11, 2010, the District served a subpoena duces tecum (SDT) on Sally Fitts seeking production of records related to Student. According to the District's moving papers, Fitts is a licensed clinical social worker who provided services to Student during the time at issue in this case. On October 26, 2010, Fitts sent a letter to the District's counsel explaining that she would not comply with the subpoena because she believed the documents were privileged. Neither Fitts nor Student filed a motion to quash the subpoena.

On January 3, 2011, the District filed a motion asking OAH to issue an order compelling Fitts to produce the documents. No response to that motion has been received by OAH.

APPLICABLE LAW

A party to a due process hearing under the Individuals with Disabilities 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, subd. (e).) The hearing officer in a special education due process proceeding may issue subpoenas or SDTs upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

The District's motion cites to no authority for the proposition that a motion to compel can be used to enforce compliance with a subpoena by a non-party to the case. When a lawful subpoena has been served on a non-party and that party refuses to comply, there are remedies that the party serving the subpoena may pursue to enforce that subpoena. However, a motion to compel production brought before OAH is not one of those remedies.

ORDER

The motion to compel production of records is denied. The denial is made without prejudice to allow the District to pursue the appropriate means of enforcing a subpoena duces tecum which was served on a non-party to the case.

Dated: January 10, 2011

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings