

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT, LIVE OAK SCHOOL
DISTRICT, AND CYPRESS CHARTER
SCHOOL.

OAH CASE NO. 2010120551

ORDER DENYING (1) DISTRICT'S
MOTION TO QUASH, (2) STUDENT'S
MOTION TO COMPLY WITH
SUBPEONA DUCES TECUM, AND (3)
DISTRICT'S REQUEST FOR
SANCTIONS

On December 16, 2010, Parent on behalf of Student (Student) filed a request for a due process hearing (complaint) naming the Fairfield Suisun Unified School District, Live Oak School District, and Cypress Charter School as respondents. On February 9, 2011, the Fairfield Suisun Unified School District (District) produced records to Student's counsel.

On March 21, 2011, Student issued and served on the District's counsel a subpoena duces tecum (SDT) requesting therapy session notes made by Student's counselor, Arlene Caron. The SDT requested that the documents be produced on March 31, 2011. On March 23, 2011, the District filed a motion with OAH seeking to quash the SDT and seeking to redact information to shield the name of a mandatory reporter of child abuse which appears in the notes. On March 28, Student filed an opposition to the District's motion contending that there is no legal basis for the District's legal position.

On March 30, 2011, Student filed a motion to compel the District to comply with the SDT. The District filed its opposition on April 5, 2011. In its opposition, the District states that it complied with the SDT timely having produced the required records on March 31, 2011. In addition the District requested that OAH award it \$1,300.00 in sanctions because the motion to compel was filed prematurely, which caused the District to incur attorney's fees to respond. On April 6, 2011, Student filed its reply to the District's opposition. Student acknowledges that the motion was filed prematurely due to inadvertence. Student also stated that the "[o]n March 31, 2011, Respondent timely responded and did provide and certify that the therapy service logs it had previously provided to Petitioner on or about February 9, 2011, constituted all records created by Arlene Caron, Fairfield-Suisun USD School Psychologist, and that Ms. Caron did not create or maintain any additional records of counseling or therapy services to [Student]."

DISTRICT'S MOTION TO QUASH

The District's motion to quash is moot as both sides acknowledge that the SDT was complied with by the District's March 31, 2011 response.

STUDENT'S MOTION TO COMPEL

The Student's motion to compel the District to comply with the SDT is also moot as both parties acknowledge that the District did comply with the SDT on March 31, 2011.

DISTRICT'S REQUEST FOR SANCTIONS

Here, Student's attorney admits that the motion was filed prematurely but fails to give any reasons for her mistake and inadvertence. Thus, the District's request for sanctions has merit in that Student filed its motion to compel prior to the time that the District had to comply with the SDT. But, the award of sanctions is an equitable remedy which permits the court to weigh the equities of the actions of both parties.

Here, the District does not come with clean hands. When the District submitted its production of records to the Student, there was no mention that the records produced were all the records in its possession regarding counseling and therapy services provided to Student. Thereafter, Student made other requests to District counsel attempting to obtain all records pertaining to therapy services provided to Student including therapy notes by Ms. Caron. The District failed to respond causing Student to issue two SDTs. The District failed to notify Student's counsel that there were no records other than those previously produced until the last possible minute when it complied with the SDT. The filing prematurely by one day of a motion to compel must be balanced against the District's counsel's actions in not informing Student's counsel that no such records existed on or about February 9, 2011, a time when the District knew or should have known of the absence of further records. This failure to inform Student that no such records exist is the cause of the Student incurring expense in preparing the SDTs and responding to a motion to quash, which appears without merit. Thus, the District is not with clean hands and is not entitled to receive sanctions.

ORDER

- (1) The District's March 23, 2011, motion to quash is denied as moot;
- (2) The Student's March 30, 2011, motion to compel District to comply with the SDT is also denied as moot; and

(3) The District's request to sanction Student and her attorney is denied on the merits.

Dated: April 7, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings