

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

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

OAH CASE NO. 2010120551

ORDER FOR IN-CAMERA REVIEW
REGARDING LIVE OAK UNIFIED
SCHOOL DISTRICT'S AND CYPRESS
CHARTER SCHOOL'S MOTION TO
QUASH SUBPOENA DUCES TECUM

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 (Fairfield), Live Oak School District (LOUSD), and Cypress Charter School (CCS) as respondents. On February 9, 2011, Fairfield 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. Student also served a SDT on Fairfield seeking treatment notes from their counselor. LOUSD and CCS produced therapy notes from Megan Tresham for the 2008-2009 school year. The notes included redacted sessions on March 25, 2009, and from April 27, 2009 through May 12, 2009. Counsel for LOUSD and CCS indicated that the redactions were made to protect confidential information, the identity of the mandatory reporter of child abuse, pursuant to Penal Code, section 1167, subdivision (d)(1).

On March 23, 2011, LOUSD and CCS filed a motion to quash the SDT and to redact certain information in order to shield the identity of the mandatory reporter. On March 30, 2011, Student filed a motion seeking to compel Fairfield to comply with the SDT. On April 7, 2011, OAH issued an order as to the Fairfield SDT.¹

On April 11, 2011, Student filed a document entitled, "Response to OAH's April 7, 2011 Order." Basically, Student is requesting a ruling on the motion to quash by LOUSD and CCS. The pleading is deemed to be a request for ruling on the motion to quash brought by LOUSD and CCS.

¹ The April 7, 2011 order by OAH instead mistakenly ruled as if the motion to quash had been brought by Fairfield instead of LOUSD and CCS.

The issue as to whether the treatment notes are subject to confidentiality pursuant to Penal Code, section 1167, subdivision (d)(1) can only be determined by reviewing the documents themselves.

OAH will conduct an in-camera review. Accordingly, LOUSD and CCS are to file under seal a copy of the treatment notes without redaction along with a copy of the redacted treatment notes already produced to Student no later than April 20, 2011. LOUSD and CCS shall also file a written statement of their position as to why these portions should not be produced citing legal authority in support of their position. Student shall be served with a copy of their written statement and may file a rebuttal written statement by April 23, 2011.

IT IS SO ORDERED.

Dated: April 12, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings