

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011010530

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011030805

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

ORDER GRANTING MOTION TO  
QUASH SUBPOENA OF CLIFFORD  
BOCHNER, M.D.

On January 19, 2011, Parent, on behalf of Student, filed a Request for Due Process Hearing in Office of Administrative Hearings (OAH) case number 2011010530 (First Case), naming the Los Angeles Unified School District (District). On March 16, 2011, Parent filed a Request for Due Process Hearing in OAH case number 2011030805 (Second Case), naming District. On April 8, 2011, OAH consolidated the two cases. The hearing for the consolidated case was scheduled for May 17, 18 and 19, 2011. On May 9, 2011, the ALJ continued the hearing dates to June 21, 22, and 23, 2011.

On May 4, 2011, Parent sent Clifford Bochner, M.D. a subpoena for personal appearance and a subpoena duces tecum to appear at the due process hearing then set for May 17, 18, and 19, 2011. Through his attorneys, Dr. Bochner filed a Motion to Quash the Subopenas, which was granted on May 10, 2011.

On June 10, 2011, Parent again served Dr. Bochner with a subpoena for personal appearance and subpoena duces tecum for documents and appearance at hearing on June 21, 22, and 23, 2011. The rationale for the subpoena is identical to the subpoena served on March 16, 2011. On June 15, 2011, Dr. Bochner, again through his attorneys, filed a second Motion to Quash.

## 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, subds. (e)(2), (3).) The provisions of the Administrative Procedures Act governing subpoenas do not apply to special education hearings. (Cal. Code Regs., tit. 5, § 3089.) However, the hearing officer in a special education due process proceeding may issue subpoenas or SDT's upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) Special education law does not specifically address motions to quash subpoenas. 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

Dr. Bochner has not treated, evaluated, or provided medical care to Student since his birth. Parent has previously asserted that it is important for the trier of fact to understand Student's current medical condition to understand Student's abilities and the overall effect of Student's medical diagnosis on Student's education.

As indicated in OAH's prior quashing of subpoenas in this matter, Student's past medical history is understandably of great concern for Parent in the larger framework of Student's overall health and well-being. However, there is insufficient showing that the information relating to his prenatal medical history sought by the subpoena and SDT is relevant or reasonably necessary to indicate his current ability to access his education or to the issue of whether District failed to provide Student a free appropriate public education. Without a sufficient nexus to Student's prenatal health and his current educational needs or progress, this witness's appearance or records are not relevant or reasonably necessary for a due process hearing on the issue of determining a free appropriate public education.

Accordingly, Dr. Bochner's appearance and medical files sought by the subpoena and SDT are not relevant or reasonably necessary. Therefore, Dr. Bochner's motion to quash the subpoena and SDT is granted.<sup>1</sup> Since the motion to quash the subpoena and SDT is granted on the basis of lack of relevance and reasonable necessity, the other allegations of third-party privacy violation or embarrassment, harassment, and annoyance, were not considered.

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<sup>1</sup> The subpoena and SDT was also improperly served by certified mail and can be quashed on that basis alone. Parent used OAH's subpoena form which allows for service by certified mail in general jurisdiction cases. OAH's subpoena form has not been revised to reflect the subpoena requirements for special education due process hearings.

ORDER

1. Dr. Bochner's motion to quash the subpoena for his personal appearance and subpoena duces tecum for records is granted.

Dated: June 20, 2011

/s/

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JUDITH L. PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings