

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2011060001

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011050857

ORDER GRANTING IN PART AND
DENYING IN PART SOUTH
PASADENA UNIFIED SCHOOL
DISTRICT'S MOTION TO QUASH
SUBPOENA DUCES TECUM TO
ROBERT YIM

On May 19, 2011, South Pasadena Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011050857 naming Parent on behalf of Student (Student) as the respondent. On May 27, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060001 naming District. On June 9, 2011, the cases were consolidated. On June 13, 2011, the Office of Administrative Hearings granted Student's Motion to amend her complaint, which alleged, in pertinent part, that District failed to complete Student's triennial IEP.

On June 17, 2011, Student served a subpoena duces tecum (SDT) upon Kendra Rose, District's special education director, requesting production of the "District file" for Student, documents, emails and service provider logs. On July 13, 2011, the District filed a motion to quash the Rose SDT. On July 19, 2011, OAH granted in part and denied in part District's motion to quash the Rose SDT.

On July 18, 2011, Student filed a document entitled, in pertinent part "Motion to Subpoena the Complete Handwritten Triennial IEP, Triennial Assessment Report, Triennial Assessment Plan." On July 21, 2011, District filed an Opposition. On July 25, 2011, OAH issued an order granting Student's motion. In the order, OAH permitted Student to subpoena the production of the handwritten Triennial IEP, the Triennial Assessment Report, and the Triennial Assessment Plan.

On July 29, 2011, OAH issued orders as the District's motions to quash SDT's served upon Prudence Levine, Nancy Goldstein, and James Macomber. Two of these SDT's (Levine and Goldstein) involved requests to produce copies of the service provider logs. The order required the production of service provider logs for school years 2009-2010 and 2010-2011, if any exist.

On June 15, 2011, Student issued and caused to be served upon Robert Yim, a District assistant principal, an SDT requesting that he produce (1) mail and email communication with Parents regarding Student; and (2) service provider logs kept by providers of services to Student.

On August 4, 2011, the District filed its motion to quash the SDT on grounds that (a) the SDT failed to comply with appropriate statutes because it failed to contain an affidavit stating the reasons that the documents were needed; (b) the SDT was vague and overbroad as to all items as there are no dates cited; (c) the service provider logs have already been provided; (d) Student has failed to establish the existence or contents of such emails; and (e) Yim is not the custodian of records. Student has not filed an opposition to the motion.

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 SDT's. In ruling on such motions, the Office of Administrative Hearings relies by analogy on the relevant portions of California Code of Civil Procedure, section 1987.1, which 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

The District's objection to the SDT on grounds that it fails to comply with Code of Civil Procedure section 1987.5 has already been ruled on by OAH (July 19, 2011 Order, p.2):

The District's objection is form over substance as it can be easily presumed that Student's own education records are relevant as to whether the District provided her with a free appropriate public education.

The District's objection that the Student's service provider logs have already been produced is supported by the declaration of Nancy Goldstein, a school psychologist. Goldstein declares that she handed a copy of the service provider logs at the May 25, 2010 IEP. The District argues in its motion that Yim is not the custodian of records and would not have possession of such records. Additionally, OAH has previously ordered the production of such logs which have not been previously produced. Thus, Student's request for production of these records is moot.

District's objection that the SDT is vague and overbroad does not have merit as the SDT requests copies of "mail and email communications" between Yim and Parents. District's argument that Student must establish the existence and contents of the emails is without merit. If Student was able to do that, there would be no need to issue an SDT for those documents. Such a request is specific and not vague nor overbroad.

ORDER

District's motion to quash the SDT to Robert Yim is granted in part and denied in part:

- (1) District's motion to quash production of the service logs is granted.
- (2) District's motion to quash production of mail and email between Yim and Parents is denied and the witness shall produce these documents if they exist and were not previously produced to Student.

Dated: August 11, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings