

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011060184
NO. 2011050574

v.

MANTECA UNIFIED SCHOOL DISTRICT,

MANTECA UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2011050289

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO
QUASH

The Manteca Unified School District (District) filed a request for due process hearing in case number 2011050289 (District's complaint) on May 4, 2011, which raised the single issue of whether the District may assess Student in the area of social/emotional needs in accordance with a December 2010 assessment plan.

On May 12, 2011, Student filed a request for mediation and due process hearing in case number 2011050574 (Student's first complaint), which also related to the issue of assessments in the December 2010 assessment plan resulting in the first consolidated matter. On May 24, 2011.

On May 24, 2011, Student filed a second request for mediation and due process hearing in case number 2011060184 (Student's second complaint). Student's second case also involved issues relating to the December 2010 assessments. On June 20, 2011, Student's second complaint was consolidated with the first consolidated matter.

On October 12, 2011, a telephonic prehearing conference (PHC) was conducted where Student's motion to allow the telephonic testimony of Robert Morgan was granted. As part of the discussion of the motion for telephonic testimony Student provided an offer of proof of the necessity of Mr. Morgan's testimony.

On October 19, 2011, Gregory J. Rousseve, Deputy General Counsel, California Department of Education (CDE) filed, in the form of a letter, a motion to quash the subpoena for Robert Morgan to provide testimony on October 25, 2011.

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, subds. (e)(2), (3).) The hearing officer in a special education due process hearing may issue subpoenas or subpoenas duces tecum (SDTs) upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit.5, § 3082, subd. (c)(2).) However, special education law does not specifically address motions to quash subpoenas or SDTs. 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

CDE claims in its letter that Mr. Morgan is the author of the Reconsideration Report in Case No. R-0835-10/11 as well as the author of the subsequent report. CDE further claims that Mr. Morgan can provide no more information than is contained in the report. CDE provides no declaration from Mr. Morgan in its motion to quash Student's subpoena.

Student during the PHC provided an oral offer of proof regarding the purpose of Mr. Morgan's testimony and characterized the testimony as being a vital piece of the case. Specifically, Student stated that Parent had conversations with Mr. Morgan and Mr. Morgan provided Parent with web sites to understand the violations that he found. Student asserts that Mr. Morgan can testify as to how he came to the conclusion that District was not in compliance with the law. During the PHC Student stated that he would contact Mr. Morgan and determine whether telephonic testimony would suffice. Given that Student served an additional subpoena for personal testimony, it appears that he has determined that the personal testimony of Mr. Morgan is necessary.

Given the discrepancy between the information provided in the CDE letter and Student's offer of proof at the October 12, 2011 PHC, it is appropriate to have Mr. Morgan testify in person. Accordingly, CDE's motion to quash is denied. However, in the event that stipulations are entered into between parties at the beginning of the hearing on October 24, 2011, CDE's motion to quash Mr. Morgan's subpoena may be reconsidered.

ORDER

CDE's motion to quash subpoena is denied.

Dated: October 21, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings