

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT AND SAN MATEO
BEHAVIORAL HEALTH AND
RECOVERY SERVICES.

OAH CASE NO. 2011080184

ORDER DENYING MOTION TO
QUASH SUBPEONA DUCES TECUM

On August 8, 2011, Parent on behalf of Student (Student) filed a Due Process Request naming the San Mateo Union High School District (District) and the San Mateo County Behavioral Health and Recovery Services (BHRS) as respondents. Student filed an amended complaint on November 23, 2011. In both complaints, Student alleges that the District and BHRS denied Student a free appropriate public education (FAPE), in part, for failing to provide services, including counseling, to meet Student's unique needs for school years 2009-2010, 2010-2011, and 2011-2012.

On December 14, 2011, the District had issued by its attorney a subpoena duces tecum (SDT) on the Edgewood Center for Children and Families (Edgewood) for records relating to Student. Edgewood provided counseling services to Student under contract with BHRS. Student's parent on December 14, 2011, was served with a copy of the SDT and a Notice to Consumer. Student's attorney was served by mail on December 14, 2011, and Edgewood was personally served on December 20, 2011.

Student filed a motion to quash the SDT on December 21, 2011. Student contends that (a) the respondents' attorney is not authorized to issue SDTs, (b) there was not proper service, (c) the SDT did not contain a statement showing good cause and that the material sought is relevant to the matter, and (d) that Student's right to privacy would be infringed.

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).” The Office of Administrative Hearings (OAH) has relied on the provisions of the Code of Civil Procedure, including section 1985, relating to the issuance of SDTs.

Special education law does not specifically address motions to quash subpoenas or SDTs. 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

An attorney is authorized to issue an SDT. (Code of Civil Procedure, section 1985 (c).) Student’s argument that the SDT was not properly served is without merit as the Proof of Service indicates that Edgewood was personally served on December 20, 2011 at 10:30 a.m.

The affidavit portion of the SDT clearly states the reasons for the necessity of the material requested and its relevancy to the case. Student is contesting the appropriateness of the mental health services provided by the District and BHRS. BHRS contracted with Edgewood to provide the services which are being contested. Thus, the District has demonstrated good cause why the documents are needed to prepare its case and the relevancy that the documents have to the case.

Student’s contention that the records requested are protected under the Physician-Patient privilege of Evidence Code section 994 is also without merit. Here, Student has placed into issue his mental condition and the appropriateness of such services provided to him by the respondents. Evidence Code section 1016 provides that the privilege is waived whenever the mental or emotional condition of the patient is tendered by the patient or any party claiming through or under the patient. Here, the petitioner is the Student and his parents.

ORDER

Student's motion to quash the SDT to Edgewood Center for Children and Families is DENIED.

Dated: December 23, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings