

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011090432

ORDER QUASHING SUBPOENA
DUCES TECUM

On December 2, 2011, Attorney for Student served a Subpoena Duces Tecum on the District. On December 15, 2011, Attorney for the District filed a Motion to Quash the Subpoena Duces Tecum on the grounds that it was issued prematurely and was seeking discovery which is not permitted in special education matters. Student has not filed an opposition to the Motion to Quash.

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, § 56506, subds. (e)(3), (3).) There is, however, no right to pre-hearing discovery under the IDEA. A parent may obtain his/her child's educational records (Ed. Code § 56504.) Additionally, parents are entitled to receive copies of all the documents the District intends to use at hearing, no less than five days prior to the hearing (Ed. Code § 56505, subd. (e)(7).)

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 (SDT) (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 is on the ground that it is an attempt at pre-hearing discovery, which is not allowed in special education cases. Student's complaint contains two issues, both of which address the issues of appropriate placement and services, to which Student is requesting relief of a residential treatment center placement. Student's SDT requests District records regarding physical restraint policies, employee records, and staff training records. Student's declaration indicates that the requested documents are necessary to determine whether the District's use of physical restraint is lawful. The records, as requested in the declaration, are beyond the scope of Student's complaint, and as such, constitute pre-hearing discovery.

ORDER

The District Motion to Quash the Subpoena Duces Tecum is granted.

December 23, 2011

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings